UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/58/Add.6
6 March 1990

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1989

Addendum

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND */

[30 October 1989]

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*/ For the initial report submitted by the Government of the United Kingdom of Great Britain and Northern Ireland, see CCPR/C/1/Add.17, Add.35, Add.37 and Add.39; for its consideration by the Committee, see CCPR/C/SR.67, SR.69 and SR.70; SR.147-SR.149; and SR.161, SR.162 and SR.164, and Official Records of the General Assembly, Thirty-third Session, Supplement No. 40 (A/33/40), paras. 184-226, as well as Thirty-fourth Session, Supplement No. 40 (A/34/40), paras. 228-247 and paras. 300-371, respectively. For the second periodic report submitted by the Government of the United Kingdom of Great Britain and Northern Ireland, see CCPR/C/32/Add.5, Add.14 and Add.15; for its consideration by the Committee, see CCPR/C/SR.593-SR.598 and SR.855-SR.857 and Official Records of the General Assembly, Fortieth Session, Supplement No. 40 (A/40/40), paras. 518-580, and Forty-fourth Session, Supplement No. 40 (A/44/40), paras. 140-189, respectively.

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Part I. REPORT ON GREAT BRITAIN AND NORTHERN IRELAND

A. General

1. The United Kingdom has a long history of concern for human rights and some important achievements to its credit. Magna Carta in 1215, the Habeas Corpus Acts, the Bill of Rights in 1688 and the Scottish Claim of Right in 1689, the progressive development of parliamentary democracy, the establishment of religious freedom, the extension of the franchise and the beginnings of the trade union movement are all landmarks in British history; and in more recent years the United Kingdom has made important contributions to the drafting and adoption of the European Convention on Human Rights and to the International Covenant on Civil and Political Rights itself.

2. The country has not during this period felt the need for a written constitution or a comprehensive bill of rights: the principle has been that the rights and freedoms recognized in other countries' constitutions are inherent in the British legal system and are protected by it and by Parliament unless they are removed or restricted by statute. The position has been summed up by the late Stanley de Smith, an eminent constitutional lawyer, in his statement that freedoms are not to be guaranteed by statements of general principle, that they are residual, and that for every wrongful encroachment on these liberties there is a legal remedy.

3. The rights and freedom protected in this way have at various times been reinforced by legislation to deal with specific problems as they have arisen. Examples include the abolition of slavery and the prohibitions on the exploitation of children in the 19th century; measures to protect freedom of expression while prohibiting extremist incitement to public disorder in the 1930s; and the Equal Opportunities legislation of the 1970s which dealt with discrimination on grounds of race or sex. Other measures from that period included legislation on industrial relations and trades unions, and on immigration from the Commonwealth, for example the Industrial Relations Act 1971, the Trade Unions and Labour Relations Act 1974, the Immigration Appeals Act 1969, and the Fair Employment (Northern Ireland) Act 1989, each of which incorporated statutory safeguards to protect individual rights and freedoms. Such measures typically provided for the formation of statutory bodies or tribunals with specific responsibilities for promoting good practice - for example, the Commission on Racial Equality and the Equal Opportunities Commission - or for hearing appeals (industrial tribunals, immigration appeals).

4. Some legislation is introduced with the intention or the effect of enabling the United Kingdom to subscribe to international agreements or to incorporate their provisions on a statutory basis. For example, the Criminal Justice Act 1988 contained provisions on compensation for wrongful conviction, which secures the United Kingdom's compliance with article 14, paragraph 6, of the Covenant, and on the proscription of torture, following which the United Kingdom ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

5. A further development during the last 12 years or so has been the increasing influence of the European Commission and Court of Human Rights and of judicial review in the domestic courts. The United Kingdom must abide by judgements of the European Court in cases to which it is party. The rulings

of the Court have had a considerable impact on United Kingdom law and practice, often giving increased priority or urgency to changes which were already under consideration. Sometimes the judgement of the Court has required the insertion of judicial procedures into what had previously been regarded as an administrative process where accountability was to Parliament through Ministers. Examples of Court decisions which have led to changes in United Kingdom law are those of Dudgeon on homosexuality in Northern Ireland and Abdulaziz, Balkandali and Cabales on sex discrimination in immigration rules. The Government routinely scrutinizes draft legislation and proposals for administrative change to see whether they are compatible with international human rights instruments to which the United Kingdom is party.

6. The case for more comprehensive human rights legislation has been argued at various times during the past 15 years. The incorporation of the European Convention on Human Rights in United Kingdom domestic law has been the solution most often favoured; but neither of the two largest political parties has adopted it as its policy, and a series of bills introduced by private Members in both Houses of Parliament has failed to attract sufficient support to make progress.

7. Reasons against legislation of this kind have been that the broad propositions in the Convention are often unsuited to the close textual analysis of statutes undertaken to determine the will of Parliament; the risk of damaging conflict between the courts on the one hand and the Government and Parliament on the other, with courts being used as a means of challenging unpopular action by the government of the day which has received the support of Parliament; and the view that injustice or unfairness of the kind which such a bill would be designed to correct could in the United Kingdom context be more suitably and more effectively challenged in Parliament.

8. As the Attorney-General, Sir Patrick Mayhew, QC, then Solicitor-General, said on 6 February 1987 in opposing Sir Edward Gardner's Human Rights Bill, which would have incorporated the European Convention on Human Rights:

> "The judiciary must be seen to be impartial. More especially, as far as practicable it must be kept free from political controversy. We must take great care not to propel judges into the political arena. However, that is what we would do if we asked them to take policy decisions of a nature that we [Parliament] ought properly to take ourselves and which under our present constitution we do take. We would increase that danger if we required or permitted them to alter or even reverse decisions taken by Parliament .... Our constitutional history rather strongly shows that over the centuries the British people have preferred that these matters should be decided by people whom they can elect and sack rather than people immune from either process - wiser, less opportunist or even less venal though such people might well be considered to be."

9. Areas where issues of human rights and personal freedom are at present a matter of particular concern include:

(a) The need for firm and effective action to prevent terrorism, including procedures for the detention, questioning and trial of suspects in which the rights of the individual have to be balanced by the protection and safety of the public;

(b) Immigration and claims to asylum, where the continuing pressure of immigration from certain parts of the world makes it necessary to operate tight controls and apply rigorous investigative procedures which may involve inconvenience or distress for the individuals concerned;

(c) The extent to which direct and indirect discrimination on grounds of race and sex is still practised by individuals and institutions, not only in ways which are prohibited by law but often in subtle and even unconscious ways which are difficult to identify and even more difficult to correct;

(d) The difficulty of conducting fair and impartial investigations, the results of which will command general acceptance and public confidence, into complaints of misconduct by public officials, members of the security forces or others, or into alleged miscarriages of justice in the three areas indicated in (a)-(c) above.

10. These matters are dealt with in more detail in part II as they arise under the different articles of the Covenant.

11. The United Kingdom is a unitary State and comprises England and Wales, Scotland and Northern Ireland; references in this report to "Great Britain" refer to England and Wales and Scotland taken together. Scotland and to some extent Northern Ireland have separate legal systems from that applying in England and Wales, but similar principles apply throughout the United Kingdom.

12. This report is followed by reports by the States of Jersey and Guernsey and the Government of the Isle of Man (part II).

13. The Government intends to make the text of these reports, together with the initial and second reports and the summary records of the examinations by the Committee widely available throughout the United Kingdom.

14. A supplementary report describing the position in the United Kingdom's Dependent Territories is also submitted (part III).

B. Information relating to articles in parts I, II and III of the Covenant

15. The following information is supplementary to that provided in the first and second reports of the United Kingdom in August 1977 and August 1984 and given by the United Kingdom delegation at the meetings of the Human Rights Committee which discussed these reports. Articles in relation to which no new legislative or administrative developments have occurred are not included in this report (i.e. arts. 5, 8, 11, 16 and 26). As in the past, the United Kingdom has provided information as fully as possible. Inclusion of particular points does not necessarily mean that the United Kingdom considers that they fall within the scope of particular articles of the Covenant.

Article 1

16. Successive British Governments have since 1945 consistently promoted self-government and independence in the dependent territories of the United Kingdom in accordance with the wishes of the inhabitants and the provisions of the United Nations Charter. The United Kingdom's policy towards the dependent territories for which the United Kingdom is still responsible continues to be founded on respect for the inalienable right of peoples to

determine their own future. The vast majority of the dependent territories for which the United Kingdom was previously responsible have chosen, and now enjoy, independence. A small number, however, prefer to remain in close association with the United Kingdom, although they are able to modify their choice at any time.

17. As regards paragraph 3 of article 1, the United Kingdom's support for the right of self-determination is well known. The United Kingdom regularly supports resolutions in United Nations bodies calling for the realization of that right.

18. The right to self-determination in the United Kingdom itself is exercised primarily through the electoral system. British citizens and citizens of other Commonwealth countries, together with citizens of the Republic of Ireland, are entitled to vote at Parliamentary elections provided they are aged 18 or over, resident in the United Kingdom and not subject to any legal incapacity to vote; most British citizens living abroad are also eligible to register as electors.

19. The British system of parliamentary government is sustained by an electorate casting its votes in free and secret ballots at periodic elections which offer a choice between rival candidates, usually representing organized political parties of different views. A general election, for all seats in the House of Commons, takes place at least every five years, but a Parliament may be, and often is, dissolved by the Sovereign, acting on the Prime Minister's advice, before the end of the full legal term.

20. Referendums have been held on Scottish and Welsh devolution, and on membership of the European Economic Community. Whether the people of Northern Ireland wished to remain in the United Kingdom was tested in a Border Poll in 1973 with a positive result. All elections in Northern Ireland continue to produce an overall majority of the electorate voting for Unionist policies, i.e. continuing as part of the United Kingdom.

Article 2

Ethnic minorities

21. In Great Britain, the ethnic minority population numbers some 2,500,000 which is 4.5 per cent of the total population. The main ethnic groups are as follows:

West Indian/Guyanese	520,000
African	100,000
Indian	740,000
Pakistani	400,000
Bangladeshi	110,000
Chinese	120,000

22. The preceding figures are based on the results of the three Labour Force Surveys made between 1985 and 1987. These are voluntary, sample surveys of persons in private households throughout the United Kingdom and, with the exception of Northern Ireland where the ethnic minority population is very small, include a direct question on ethnic origin. The surveys cover one in 350 of private households and result in some 150,000 individuals being

interviewed each year. Since the figures are based on samples, they can be subject to some statistical error, and for this reason figures are based on three consecutive years and grossed up to provide national estimates. The 1991 Census may include an ethnic group question, and if so it will give an even more accurate indication of the size of the ethnic minority population.

23. The Government is fully committed to the elimination of discrimination and the development of a fair and just society in which all individuals, whatever their race or colour, have equal rights, responsibilities and opportunities. The Government seeks to ensure that its general policies and programmes, including the special initiatives it is taking in inner cities, benefit all sections of society. The Government also supports legislation, institutions and programmes which are targeted directly at tackling racial discrimination and promoting equality of opportunity.

Ethnic minorities and the criminal justice system

24. An issue of obvious and special importance is the need to avoid any possibility of discrimination in the criminal justice system. Concern has been expressed at the fact that members of ethnic minority groups are disproportionately represented in the prison population of England and Wales. As at June 1988, among the male population, 84 per cent were white, 9 per cent were of Afro-Caribbean origin, and 3 per cent were of Asian origin. Among the female population, 69 per cent were white, 19 per cent were of Afro-Caribbean origin, and 2 per cent were of Asian origin. The proportion of those of Afro-Caribbean origin is steadily increasing.

25. These figures are sometimes said to reflect discrimination against members of ethnic groups, or alternatively to reflect higher rates of offending or different patterns of offending, but the explanations are likely to be a good deal more subtle and complex. Information about patterns of offending - much of which is not reported or recorded and much of which, especially when it involves property offences, is not then cleared up - is too uncertain to support any general assertions about the ethnic background of offenders.

26. A recent government research study on sentencing at the Crown Court found no evidence of discrimination in sentencing. There is however evidence that members of ethnic minority groups are more likely to be stopped by the police, to be refused bail if they are arrested and charged, to plead not guilty, and to opt for trial before a jury where the choice is open to them. They are less likely to be the subject of a social inquiry report, but they will probably have had fewer previous convictions. They are more likely to be found not guilty or have their cases dismissed.

27. Several different factors may be at work to produce these results. One of them may be a lack of confidence in the criminal justice system, which leads members of ethnic minority groups to plead not guilty and to opt for trial before a jury when charged with an offence for which jury trial is available. The result of doing so may be to deprive themselves of the benefits of a social inquiry report, which might lead the court to impose a non-custodial penalty, and of reduced sentences to take account of guilty pleas, and perhaps more generally to appear in ways which are commonly associated with more serious types of offending.

28. It has been argued that sentences should be comprehensively monitored on a basis of ethnic origin in order to establish whether or not discrimination is in fact taking place. The Government believes, however, that comprehensive monitoring of sentencing on its own (even if it were practicable) would only add confusion and reinforce the prejudices which already exist. What is needed is a clear understanding of the way in which the system affects members of ethnic minority groups at each stage in the process, and the determination to ensure sensitivity and fairness and to create confidence at every point in the system.

29. It is now accepted that all the operational services in England and Wales - police, courts, prosecution, probation and prisons - need a clearly stated policy on race issues, a top management which is fully and publicly committed to it, and a structure and procedures for putting it into effect. The policy and procedures have to cover recruitment, training, the deployment of staff, the delivery of the service and a system for monitoring performance.

30. Comprehensive policies for dealing with all these issues are now being developed in each of the services. The prison service in England and Wales has a well developed system of accountability for race issues which operates at all levels in the system. The prison service's commitment to a policy of racial equality and to the elimination of racial discrimination is set out in a public policy statement issued in 1986 which has been disseminated widely to staff and others. Every prison has now appointed a race relations liaison officer and most now have a race relations management team. Training for new officers, refresher courses for existing staff and courses for certain specialists all contain a race relations element. New arrangements have been introduced to monitor the implementation of race relations policies.

31. The probation service also has a national statement of policy and a checklist on good practice, which area probation services are developing in their own local statements. The Metropolitan Police and some other police forces have written statements of the race relations policies and a national statement is being prepared. A similar statement has been circulated for discussion in the magistrates' courts service.

32. In Scotland, a report by the Chief Inspector of Prisons for Scotland into conditions and arrangements for accommodating persons detained under the Immigration Act 1971 and members of ethnic minority groups was published on 5 July 1989. The Secretary of State for Scotland has accepted in principle its six main recommendations. A comprehensive policy statement on race relations within Scottish prisons is being drawn up. Guidance on other recommendations, relating to diet, information on prisoners' rights, complaints procedures and appointment of ethnic minority liaison officers, will be issued as soon as possible.

33. Progress in recruiting staff from the ethnic minorities is still disappointing. Most such staff are in the lower grades of their respective services, but the numbers are growing steadily both in the services themselves and in the range of voluntary activities which are associated with this system, for example as lay magistrates, or as members of executive or advisory committees of various kinds (see para. 367 below).

34. The services are improving their programmes for the employment and development of ethnic minority staff and are making sure that ethnic minority staff are not restricted to a limited range of jobs, or placed under unreasonable pressures by reason of their colour. They should, moreover, be employed where possible in positions where they are publicly visible and are able by their presence to reassure the ethnic minority communities that the service to which they belong is one in which they can have confidence. It is also important to make sure that people from the ethnic minorities are receiving their fair share of the services that are being provided to the public, that they are receiving the same quality of service as other people, and that they are showing the same level of satisfaction. Effective monitoring and information systems are needed in matters both of employment and of service delivery. They are difficult to construct but they are gradually being developed and put in place in each of the services concerned. The Government is fully committed to promoting and supporting these developments.

Other measures against racial discrimination

35. The Race Relations Act 1976, which applies to the whole of Great Britain but not to Northern Ireland, where the problems are of a different kind, is generally working well, but the Government remains ready to fill any gaps where it thinks this is necessary and where the opportunity arises. The Act has been amended by the Housing and Planning Act 1986 to make it unlawful for a planning authority to discriminate against a person in carrying out its planning functions. By virtue of the Housing Act 1988, the Commission for Racial Equality now has the power, subject to the approval of Parliament, to issue codes of practice containing such guidance as its thinks fit for the elimination of discrimination in the field of rented housing and for the promotion of equality of opportunity in the field of rented housing between persons of different racial groups. The Housing Act 1988 also imposes a duty on the Housing Corporation and Housing Action Trusts to make appropriate arrangements with a view to ensuring that their various functions are carried out with due regard to eliminating unlawful racial discrimination and to promoting equality of opportunity, and good relations, between persons of different racial groups.

36. The Education Reform Act 1988 will extend throughout the education sector and will ensure that grant-maintained schools will still have a duty to promote equal opportunities and be eligible for grants under section 11 of the Local Government Act 1966 to help meet the special needs of members of ethnic minorities. The law on incitement to racial hatred has also been strengthened; this is described in connection with the relevant articles of the Covenant.

Political and religious discrimination

37. Discrimination on grounds of political or religious belief has not been a significant problem in Great Britain for many years. An exceptional situation prevails in Northern Ireland, as described in paragraphs 47 to 50 below. Some religions, such as Judaism or Sikhism, are protected by the Race Relations Act 1976, since both Jews and Sikhs are regarded as racial groups. Various statutory disabilities have in the past been imposed upon Jews and Roman Catholics. For the most part, these were gradually removed during the course of the last century, although it was only during the present administration's term that the bar to a Roman Catholic holding the office of

Lord High Chancellor of Great Britain, the Government's chief judicial officer and head of the judiciary, was removed. The position today is that there are hardly any significant religious restrictions imposed by statute upon the holding of offices or employment other than those necessitated by the job itself (e.g. since the Monarch is Supreme Governor of the Church of England, no Roman Catholic may occupy the throne and anyone who marries a Roman Catholic is excluded from succeeding to the throne).

38. The Church of England, as the Established Church in England, retains a special position in the Constitution. The more important privileges are that 26 senior bishops, who are appointed by the Crown, have the right to sit and vote in the House of Lords; that the Church is empowered to pass measures governing its faith, forms of worship, rites and ceremonies which, if approved by Parliament, become the law of the land; that decrees of its ecclesiastical courts will be enforced by the State; and that marriages according to the usages of the Church of England do not require civil preliminaries provided they are by banns, or common or special licence. On the other hand, all persons in England, whatever their religious belief or adherence, have the right to be married by civil ceremony or according to the rites of the Church of England. The disestablishment of the Church of England has been argued on various occasions during the last 100 years, but it has never become a major political or religious issue. In Scotland, the Church of Scotland, whose Constitution was approved by Parliament in 1921, enjoys complete independence in spiritual matters. All marriages in Scotland, whether civil or religious, require civil preliminaries.

The Commission for Racial Equality (CRE)

39. The Commission was set up under the Race Relations Act 1976. Its overall duties are to work in Great Britain towards the elimination of racial discrimination and the promotion of equality of opportunity and good race relations, and to keep the operation of the Act under review. In the Government's view, the Commission has been effective. Discrimination has not been eliminated, but the Commission has, through its enforcement of the law and promotional activities, created a widespread awareness of the law on unlawful discrimination; and it has made significant progress, in the employment field particularly, towards the establishment of genuine equal opportunities policies and practices. Ethnic minority unemployment is one and a half times more than white unemployment, but this figure has recently shown signs of falling. The Commission's work includes giving legal advice and assistance to complainants of racial discrimination, giving assistance and advice to and working with organizations, local authorities and employers, undertaking or assisting research and mounting formal investigations into named persons where it believes discrimination has taken place.

40. Under section 66 of the Act, the Commission is empowered to provide assistance to individuals who wish to take a case of discrimination to an industrial tribunal (for employment matters) or to a county court. The Commission cannot generally act in place of a solicitor or barrister in court, but can give advice or assistance as appropriate, and can appear at industrial tribunals on behalf of complainants.

41. In 1988, 1,440 individual applications for assistance following alleged discrimination were registered with the Commission, of which 982 were employment-related, 449 arose in areas other than employment and 9 were outside the scope of the Race Relations Act. In the same year, the Commission's Complaints Committee, which considers each application registered, dealt with 950 employment-related cases and 453 non-employment cases. Of these, the Committee decided that 261 complaints should not receive any assistance, 800 should receive no further assistance, and 254 should be helped with legal representation. Eighty-eight cases were withdrawn. In 1988, of the cases supported by the Commission (which included some pre-1988 cases), 41 were successful after hearing, 74 were settled on agreed terms and 57 were dismissed after hearing.

42. Decisions made at industrial tribunals or county courts are binding on the parties concerned. Decisions made by the appellate courts are taken into account by Government in the formulation of policy, and any practices by Government or others which are found to be discriminatory as a result of a court ruling are altered accordingly.

Rights of aliens

43. Anyone who is not a British citizen but who has indefinite leave to remain in the United Kingdom is entitled to stay without limitations as to time, place of residence, right to seek employment or to engage in business. Anyone so entitled is able to take advantage of the full range of benefits and health care. They are not, however, able to vote in local or national elections: this right is available only to British, Irish or Commonwealth citizens.

Employment of women - underground mining

44. On 21 August 1989, the Government informed the Council of Europe of its decision to denounce with effect from 26 February 1990 its acceptance of article 8, paragraph 4 (b), of the European Social Charter, which reads: "With a view to ensuring the effective exercise of the right of employed women to protection, the contracting parties undertake to prohibit the employment of women workers in underground mining and, as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy or arduous nature."

45. The Government's decision is based on its continuing commitment to removing unnecessary and outdated barriers to employment and to extending opportunities to women. It believes that the current restrictions on the employment of women in underground mining, rather than being protective, are outdated and discriminatory and act as a disincentive to employment opportunities. There is no question of reducing meaningful protection. Indeed, the Government is concerned to ensure that restrictions continue in force where it is satisfied that there are good health and safety reasons for their retention.

Positive measures to preserve religious or cultural identity

46. In general, different communities are able to preserve and practise their own cultures and religions and the Government sees no need for any direct intervention. There are, however, certain practices, e.g. polygamy, ritual scarring or certain forms of punishment which it is not thought possible to accommodate within the United Kingdom.

Northern Ireland - political and religious discrimination and discrimination in employment

47. The Government places a high priority on removing obstacles to equality of opportunity and any manifestations of religious or political discrimination in Northern Ireland society. Such discrimination by central and local government statutory bodies has been unlawful in Northern Ireland since the enactment of the Northern Ireland Constitution Act 1973. The Act also provided that any legislation by a devolved Assembly, or any subordinate legislation by the United Kingdom Parliament applying solely to Northern Ireland, should not discriminate on such grounds, and that such legislation would be void to the extent that it discriminated in this way. In addition, the Act set up an independent Standing Advisory Commission on Human Rights to advise on the adequacy and effectiveness of the law in preventing discrimination, and to recommend such changes as were necessary. In practice, the Commission has considered the whole range of human rights issues in Northern Ireland, including emergency legislation and related topics such as police powers and complaints procedures, the judicial system and delays in the criminal justice system.

48. The Fair Employment (Northern Ireland) Act 1976 outlawed religious and political discrimination in employment, and established a Fair Employment Agency to advise and assist potential complainants and to investigate employers' employment practices where necessary. Advice to employers was also provided by the Government in 1978 in the form of a "Guide to manpower policies and practices" - this was superseded in 1987 by a new "Guide to effective practice".

49. The Government has now introduced legislation to strengthen the existing law on religious discrimination in employment in Northern Ireland. Under the Fair Employment (Northern Ireland) Act 1989, the Fair Employment Agency is replaced by a new Fair Employment Commission, with increased staff and financial resources and with wide powers of investigation and inquiry. The Act also establishes a Fair Employment Tribunal which will adjudicate on individual cases of alleged religious discrimination and enforce directions of the Commission. Unintentional or indirect discrimination has been made illegal. New obligations are imposed on public and private sector employers, who must register with the Commission, monitor the religious composition of their work-force (and, in some cases, their applicants) and submit annual returns to the Commission. Failure to register, or to submit returns, are among a series of criminal offences attracting substantial fines.

50. Furthermore, an employer in breach of an order of compliance of the Fair Employment Tribunal may receive a monetary penalty of up to £30,000. Any employer who is in breach of his obligations under the new Act may not be considered for public sector contracts and will not be eligible for government

grants. The Government is now working to ensure speedy and effective implementation of the Act and is confident that substantial progress will be made towards the eradication of religious discrimination in employment in Northern Ireland.

Article 3

Sex discrimination

51. The Sex Discrimination Act 1975 makes discrimination in Great Britain on grounds of sex unlawful in the fields of employment, education and training, the provision of goods, facilities and services, and in the disposal and management of premises. The Act is supported by extensive enforcement provisions. Anyone who considers that she or he has been the victim of unlawful discrimination has a right of direct access to the courts or an industrial tribunal. The Equal Pay Act 1970 gave a woman the right to pay and conditions equal to those of a man working for the same or an associated employer when they were doing like work, work rated as equivalent or work of equal value in terms of effort.

52. The Equal Opportunities Commission, which was set up under the 1975 Act, has enforcement powers and may give assistance to a complainant by giving advice, seeking a settlement or arranging for legal advice or representation before a court or tribunal. In Northern Ireland, the Sex Discrimination (Northern Ireland) Orders 1976 and 1988, and the Equal Pay (Northern Ireland) Act 1970, contain provisions on almost identical lines to those of the Sex Discrimination Act 1975 and the Equal Pay Act 1970 which apply in Great Britain. The 1976 Order established an Equal Opportunities Commission to enforce the legislation and to promote equality of opportunity between the sexes generally. The Commissions also have a general responsibility for advising government departments on the working of the Act and Orders and they are also a principal source of information and advice for the general public about these provisions.

53. In addition to their roles in the enforcement of the law, the Commissions do promotional and educational work, providing advice to employers and employees, to trade unions and professional bodies and to central and local government.

54. The United Kingdom ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women on 7 April 1986. The initial report was presented in May 1987 and the United Kingdom is expected to be examined on it in January/February 1990. On the position of women in public life, see under article 25 below.

Immigration control

55. Since the United Kingdom's second periodic report, and following the judgement of the European Court of Human Rights in the Abdulaziz case, a number of discriminatory provisions in the immigration control regulations have been removed. In particular:

(a) An amendment to the Immigration Rules in August 1985 extended to all women settled in the United Kingdom the opportunity, already available to their male counterparts, to be joined by their spouse or fiancé from abroad. Previously this had been open to women only if they were British citizens;

(b) The "primary purpose" test, previously applicable only to husbands and male fiancés seeking entry, was at the same time extended to wives and female fiancées. The applicant has to satisfy the entry clearance officer that the marriage was not entered into primarily for immigration purposes. The objective of the marriage test is to protect the domestic labour market by preventing marriage being used to gain admission by those who would not otherwise have qualified to enter. The legitimacy of that objective was specifically endorsed by the court in the Abdulaziz judgement;

(c) The maintenance and accommodation tests, previously applicable mainly to wives and female fiancées seeking admission, were on the same occasion extended fully to husbands and male fiancés. Under these tests, the applicant must show that he/she can be maintained and accommodated without falling a burden on public funds;

(d) The Immigration Act 1988 has repealed section 1 (5) of the Immigration Act 1971. Section 1 (5) stated that "the Rules shall be so framed that Commonwealth citizens settled in the United Kingdom at the coming into force of this Act and their wives and children are not ... any less free to come into and go from the United Kingdom than if this Act had not been passed". (The Act came into force on 1 January 1973.) The purpose of this provision was to protect the position of Commonwealth citizens who were already settled in the United Kingdom when the 1971 Act came into force. It is acknowledged that the reference to wives was discriminatory. It meant that the wives of such Commonwealth citizens but not their husbands were exempt from the normal marriage tests (see above). An alternative way of removing the discrimination would have been to extend the exemption to husbands. The view was taken, however, that the time had come for all spouses equally to have to meet the requirements of the normal marriage rules. The drafting of section 1 (5) had not made it clear whether it was intended to cover only those wives and children already settled on 1 January 1973, or to extend the rule to the future wives and children of Commonwealth men settled in the United Kingdom on that date, some of whom were children at the time. The latter more generous interpretation was followed by the Government in the years following the 1971 Act. This interpretation, combined witth the passage of 15 years, was felt, by 1988, to have honoured the spirit of section 1 (5). The Government considered that the time was now ripe to provide fair and equal treatment as between all persons settled in the United Kingdom who wished to bring their family into the country, and the 1988 Act was enacted accordingly;

(e) A further amendment to the Immigration Rules in July 1989 has extended to women of foreign nationality working in the United Kingdom the right, already available to their male counterparts, to be joined by their spouse and children (subject to satisfying certain requirements).

56. A small number of discriminatory provisions remain. Some discriminate in favour of men and others in favour of women. In each case the justification for the provision is that removing the discrimination would either unduly weaken the immigration control or needlessly penalize those who currently benefit. The discriminatory provisions are as follows:

(a) Male students from abroad, but not female students, can be joined by their spouse and children;

(b) Under section 5 of the 1971 Act, wives of deportees are liable to be deported, but there is no comparable power to deport husbands of deportees;

(c) The Immigration Rules make special provision for the admission of female "au pairs" and of dependent unmarried daughters aged 18-20. There is no comparable provision for males in these categories;

(d) The Rules make provision for the admission of widowed mothers, but of widower fathers only if aged 65 or over.

Article 4

57. The second periodic report noted that the United Kingdom's derogations from various articles of the Covenant had been withdrawn on 22 August 1984. Since then, as a result of the decision of the European Court of Human Rights of 29 November 1988 in the case of Brogan and Others, the Secretary of State for Foreign and Commonwealth Affairs notified the Secretary-General of the United Nations on 23 December 1988 that, in accordance with article 4, paragraph 3, of the Covenant, the Government found it necessary to take and continue measures derogating in certain respects from its obligations under article 9, paragraph 3, of the Covenant. This derogation was updated on 23 March 1989 so as to inform the Secretary-General of the provisions of the Prevention of Terrorism (Temporary Provisions) Act 1989, which had just come into force.

58. Since 1974, by reason of the campaigns of organized terrorism relating to the affairs of Northern Ireland, powers have been taken and exercised to enable persons reasonably suspected of involvement in terrorism connected with the affairs of Northern Ireland to be detained without charge for up to 48 hours. The period of detention may be extended for periods of up to five days, on the authority of the Secretary of State. At the time of the derogation, the powers were in section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 and in article 10 of the Prevention of Terrorism (Supplemental Temporary Provisions) (Northern Ireland) Order 1984 and article 9 of the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1984. They are now in section 14 of the 1989 Act and paragraph 6 of schedule 5 to that Act.

59. In its judgement in the case of Brogan and Others, the European Court of Human Rights held that there had been a violation of article 5, paragraph 3, of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, in respect of the applicants, each of whom had been detained under section 12 of the 1984 Act for periods of more than four days without being brought before a judge or other officer for the purposes of the article. Article 5, paragraph 3, of that Convention (which corresponds to article 9, paragraph 3 of the Covenant) provides: "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this article" [which deals with lawful arrest or detention effected for the purpose of bringing a person before the competent legal authority on reasonable suspicion of having committed an offence, or when it is reasonably necessary to prevent his committing an offence or fleeing after having done so] "shall be brought promptly before a judge or other officer authorized by law to exercise judicial power ...".

60. Following that judgement, the Home Secretary informed Parliament on 6 December 1988 that, against the background of the continuing terrorist campaign in the United Kingdom, and the overriding need to bring terrorists to justice, the Government did not believe that the maximum period of detention should be reduced. He informed Parliament that the Government was examining the matter with a view to responding to the judgement. On 22 December 1988, the Secretary of State further informed Parliament that it remained the Government's wish, if it could be achieved, to find a judicial process under which extended detention might be reviewed and, where appropriate, authorized by a judge or other judicial officer. But a further period of reflection and consultation was necessary before the Government could bring forward a firm and final view. In the meantime, a derogation was to be entered.

Article 6

Capital punishment

61. The legal position on capital punishment has not changed since the second periodic report. The death penalty for murder was abolished in 1965 and, although it remains on the Statute Book for offences of treason and piracy, it is in practice no longer carried out for any offence.

62. The most recent parliamentary debate took place in the House of Commons in June 1988. In accordance with the policies of successive governments, members of the House of Commons were given a free vote and the Government collectively remained neutral. Reintroduction of capital punishment was defeated by 341 votes to 218.

Life expectancy

63. Life expectancy for men and women continues to increase, while the rate for still births, neonatal and perinatal mortality in 1987 (the latest date for which figures are available) shows a slight though continuing improvement compared with 1985, as the attached tables show (see annex to this report). The Government is concerned to increase life expectancy and reduce infant mortality further. It supports campaigns against smoking and drug and alcohol misuse, and is promoting preventive measures against coronary heart disease and cancer. The Government has announced a major new initiative to find out why babies die, and local health authorities will be set targets for the reduction of infant mortality rates.

Use of firearms by the police

64. Police officers in Great Britain are generally unarmed. Firearms are issued only to properly qualified officers, and then under strict controls and only when operational circumstances require. The Home Office has issued guidelines to the police on the issue and use of firearms. These set out the principles governing issue and use; the level of authorization required before firearms may be issued to police officers; the conditions of issue and use; the importance of sound briefing and planning for any armed operation; and the principle of minimum force. A copy of these guidelines is attached (see annex to this report).

65. When police officers are required to carry firearms they are treated under the law in the same way as ordinary citizens. A decision to fire a gun rests with the individual officer concerned and he or she may be called upon to justify that decision before a court of law. This liability is emphasized during an officer's training and the authorization card carried by every authorized armed officer carries a reminder to that effect. An officer's defence in any legal proceedings must rest either on a plea of self-defence (which may include the defence of others) or justification of his action under the general provisions of section 3 of the Criminal Law Act 1967, which states:

> "A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large."

Section 3 does not extend to Scotland, but the position in common law in Scotland is broadly similar.

66. All operations in which shots are fired by police officers are thoroughly investigated by a separate police force to determine whether the police officers acted fully in accordance with the correct procedures and whether there are lessons to be drawn for future operations. There may also be a parallel investigation by the Police Complaints Authority. If these investigations reveal that criminal or disciplinary proceedings are appropriate, then such action follows.

67. The following table shows the number of operations in which shots were fired by police officers in England and Wales in the years 1985-1988. Following investigation and reference to the Director of Public Prosecutions, criminal proceedings were taken against four police officers in respect of three of those operations. All four officers were acquitted.

	1985	1986	1987	1988
Number of operations	7	1	7	2

Police use of firearms - Scotland

68. The position in Scotland is very similar. Guidelines have been issued by the Scottish Home and Health Department to police forces in Scotland. These cover the issue and return of firearms, training of officers, record-keeping, etc. As such they mirror very closely those issued by the Home Office to the police in England and Wales. In addition, the Lord Advocate has also issued guidance to the police in Scotland regarding the circumstances in which firearms can be used by the police in accordance with the law of Scotland. The guidelines set out the decisions which individual police officers must take and subsequently account for when carrying a loaded firearm. The guidelines state that:

> "A police officer is not entitled to open fire against a person unless he has reasonable grounds for believing that that person is committing or is about to commit an action which is likely to endanger the life of the officer himself or any other person and that there is no other way to prevent the danger."

Police use of firearms - Northern Ireland

69. Two hundred and sixty-seven police officers have been killed as a result of terrorist activity in Northern Ireland in recent years. In the light of the obvious dangers which they face, members of the Royal Ulster Constabulary regularly carry firearms. Nevertheless, strict rules exist for the issue and use of firearms and, as with England and Wales, the fundamental principle for their use is that no member of the security forces is above the law, and that no more force must be used than is reasonable in the circumstances.

Use of firearms by the military

70. The use of firearms by members of the armed forces is subject to the provisions of the criminal law. In essence, a serviceman may employ lethal force only if he believes that there is imminent danger to life (his own life or the life of others) and that there is no other way of averting that danger. In this respect the serviceman is no different from any other United Kingdom citizen. The law on the use of lethal force is the same throughout the United Kingdom.

71. "Rules of Engagement" (ROE) are issued to servicemen to provide guidance on the use of force. ROE have no legal standing in themselves, but they are based upon and consistent with the requirements of the law. They aim to ensure that fire is opened only when justified, and as a last resort, in accordance with the law of the land and the doctrine of minimum force. Servicemen receive rigorous training in ROE as well as in weapon handling, weapon safety and marksmanship.

72. All incidents involving the use of firearms by members of the armed forces are investigated by both the military and the police authorities. The police have a duty to investigate any incidents involving servicemen resulting in death or injury, and, if they consider that a crime has been committed, to bring charges against those concerned. On completion of the investigation, the police pass the papers to the Director of Public Prosecutions (DPP) or, in Scotland, to the Procurator Fiscal (PF). If the DPP or PF directs that a prosecution should be brought, the courts must decide whether the prosecution has established beyond reasonable doubt that the accused has committed a criminal offence. If criminal action is not instituted or if the serviceman is not convicted as charged, it is still, if there is evidence of a breach of discipline, open to the service authorities to conduct a court martial and, depending on the outcome, to take disciplinary action. For example, servicemen can be disciplined for the negligent discharge of weapons and for breaches in military regulations even when there is no contravention of the law.

73. Since 1975, eight servicemen have been convicted of the manslaughter or murder of five civilians as a result of the use of firearms while they were on duty. All these incidents took place in Northern Ireland. In a small number of other cases, servicemen were either charged but not convicted, or the Director of Public Prosecutions decided that no prosecution should be brought.

74. Plastic baton rounds have been issued to both the army and police in Northern Ireland. When rioting and attacks on the security forces put life and property seriously at risk, they are sometimes the only effective way of saving life, avoiding injuries and preventing serious crime. The use of

plastic baton rounds ensures that the risk of injury or death is kept to a minimum. Over the years, a variety of riot control devices have been and continue to be tested. So far, an effective and improved replacement for the plastic baton round has yet to be found. The use of plastic baton rounds has declined dramatically in recent years. During 1988, 3,104 rounds were fired, in the majority of cases during widespread rioting involving danger to life. Although in the past 20 years a total of 17 people have died in incidents apparently involving plastic (or the earlier rubber) rounds, only one such incident (death of Seamus Duffy on 9 August 1989) has taken place since 1986.

Private possession of firearms

75. Following the tragic incident in Hungerford, Berkshire, on 19 August 1987, when a man named Michael Ryan shot dead 17 persons (including himself) and injured 15 others, the Government introduced the Firearms (Amendment) Act 1988. Previously, people had only to satisfy the police that they had good reason to possess a specific firearm, or that they were proper persons to own a shotgun. The 1988 Act, which came into force in 1989, put exceptionally lethal weapons like the Kalashnikov rifle into the prohibited category (which means that they cannot normally be possessed by private individuals), and introduced stricter controls on the possession and safekeeping of shotguns. The Firearms (Amendment) (Northern Ireland) Order 1989 introduced broadly similar restrictions in Northern Ireland.

Article 7

Prisons

76. For convenience, this section of the report deals generally with the procedures for making and investigating complaints against members of the prison and police services, although these procedures are not confined to matters which fall within article 7 of the Covenant.

77. Since the last report, with effect from 1 April 1989, the prison rules which made it a disciplinary offence in England and Wales to: (a) make any false and malicious allegation against an officer; or (b) repeatedly make groundless complaints, have been abolished. The so-called "simultaneous ventilation rule", which required prisoners to put forward their grievances within the internal complaints system at the same time as any letter of complaint might be written to persons or bodies outside the prison system, has also recently been abolished in England and Wales and is being considered as part of a comprehensive review of the prison rules being undertaken in Scotland.

78. The practical consequences of these changes in England and Wales are that prisoners may now make formal complaints in writing to the Governor or to headquarters about ill-treatment by any member of the prison staff without facing the risk of disciplinary action; and they may refer their complaint to an outside body (including the police) without at the same time having to make use of the internal complaints system, with the inhibitions that that implied. When a prisoner makes an allegation, he is assured that it will be fully investigated.

79. Complaints are investigated by an officer appointed by the Governor, who must be senior in rank to the member of staff against whom the allegation has been made, and who should not, so far as possible, be responsible for the direct management of the officer or for the area of the establishment where the incident occurred. Where there is prima facie evidence of a criminal offence, the Governor, after consulting with headquarters, will call upon the police to investigate. (If the allegation is against a senior member of the prison staff, such as the Governor or his deputy, the complaint is submitted in England and Wales to the Regional Director, and in Scotland to the Director of the Scottish Prison Service, who will arrange for it to be investigated.) When the investigation has been completed, a report of the findings is placed before the Governor who, on the basis of the evidence before him, may decide to take disciplinary action against the member(s) of staff involved. Where the police have investigated a case, any decision to prosecute is taken by the Crown Prosecution Service or, in Scotland, by the Procurator Fiscal.

80. In Northern Ireland, a full review of prison rules and standing orders is planned during which the changes in the rest of the United Kingdom will be considered and incorporated as appropriate.

Police disciplinary procedures - England and Wales

81. The initial report set out the internal disciplinary procedures to which the police were at that time subject. The procedures for England and Wales were revised in 1985 under the terms of the Police and Criminal Evidence Act 1984, and a new police discipline code was introduced as set out in schedule 1 to the Police (Discipline) Regulations 1985. Under the code, it is an offence for a police officer to treat any person with whom he may be brought into contact in the execution of his duty in an oppressive manner: this offence covers any instance where an officer without good and sufficient cause conducts a search, or requires a person to submit to any test or procedure, or uses any unnecessary violence towards any prisoner or any other person, or improperly threatens any such person with violence.

82. The essential difference between the previous procedures and the procedures which came into force under the Act is the role played by the Independent Police Complaints Authority, which comprises 1 chairman, 2 deputy chairmen and 11 members. No specific qualifications are required for membership: the only stipulation, under the Police and Criminal Evidence Act 1984, is that no person who has been a police officer may be a member. The chairman is appointed by the Sovereign while the members and deputy chairmen are appointed by the Home Secretary. These are full-time posts. Appointments are for a three-year term, with the possibility of reappointment at the end of that period. The members are supported by a permanent staff who prepare case papers and assist members in carrying out their functions.

83. The Police Complaints Authority succeeded, and is largely based on, the Police Complaints Board. The Board, whose members were appointed by the Prime Minister and also included no former or serving police officers, was established under the provisions of the Police Act 1976 and was abolished by the introduction of the Police and Criminal Evidence Act 1984. The main differences between the Board and the Authority lie in the powers which the Authority possesses to supervise the investigation of the most serious

cases (the Board had no supervisory powers). The Police and Criminal Evidence Act also introduced the informal resolution procedure for dealing with minor complaints (e.g. incivility), whereby complainants, if they chose, could have their complaints dealt with by more informal means, which did not involve either the Authority or a formal investigation.

84. The Police Complaints Authority is required to report annually to the Secretary of State on the discharge of its functions during the year. Such annual reports typically include explanations and comments on the Authority's responsibilities, summaries of cases of particular interest, and any matters which may have arisen during the year which in its view deserve attention. The Authority is also required to report to the Secretary of State every three years on the workings of the complaints procedures. The Secretary of State is required to lay before Parliament a copy of every annual report and triennial review report received by him and cause them to be published.

85. Although the numbers of complaints made in recent years have been generally rising (a total of 17,393 complaints cases were received in 1986 and 18,828 in 1987; no corresponding figure is available for 1988), the number of complaints substantiated has been falling (1,129 in 1986, 924 in 1987 and 853 in 1988). Detailed figures are published each year in the annual reports of Her Majesty's Chief Inspector of Constabulary and of the Commissioner of Police of the Metropolis.

86. The 1984 Act requires the chief officer to refer to the Authority any complaint alleging that the conduct complained of resulted in the death of or serious injury to some other person. Regulations also require reference to the Authority of any complaint alleging conduct which, if shown to have occurred, would constitute assault occasioning actual bodily harm; or an offence under section 1 of the Prevention of Corruption Act 1904; or a serious arrestable offence within the meaning of section 116 of the 1984 Act. Notification of the complaint must be given to the Authority within a specified time. The Act also provides that the chief officer may refer to the Authority any complaint which is not required to be referred to it, and empowers the Authority to require the submission to it of any complaint not referred to it by the chief officer.

87. Under another provision of the Act, any indication that an officer may have committed a criminal or disciplinary offence may be referred to the Authority even if it is not the subject of a complaint, if it appears to the chief officer that it ought to be referred by reason of its gravity or because of exceptional circumstances.

88. The Police Complaints Authority is required to supervise the investigation of any complaint referred to it under the 1984 Act, and of any other complaint or other matter referred to it if it considers that it is desirable in the public interest to do so. If the Authority supervises an investigation, it may approve the appointment of the investigating officer.

89. The Act provides that the officer appointed to conduct a formal investigation should be of at least the rank of chief inspector and of at least the rank of the officer against whom the complaint is made. He should also be serving in a different subdivision or branch from the officer complained against. In appropriate cases, the chief officer will invite an officer from another force to conduct the investigation.

90. When the investigating officer has completed the investigation, he will submit a report to the chief officer. If the investigation has been supervised by the Police Complaints Authority, he will instead submit the report to the Authority and send a copy to the chief officer. At the end of an investigation which it has supervised, the Authority must issue a statement showing whether it is satisfied with the conduct of the investigation, and specifying any respect in which it is not.

91. Under section 90 (4) of the 1984 Act, if a chief officer determines that an investigation report submitted to him indicates that a criminal offence may have been committed by a member of his force, and if he considers that the offence indicated is such that the officer ought to be charged with it, then he is required to send a copy of the report to the Director of Public Prosecutions, so that consideration may be given to the question whether a criminal charge should be brought.

92. After any criminal aspects have been considered, the chief officer is required to submit the case to the Police Complaints Authority (together with a copy of the investigation report, where the Authority has not supervised the investigation), setting out his opinion on the question whether any disciplinary charges should be preferred against the officer concerned. Where the Police Complaints Authority considers that a disciplinary charge should be brought against the officer, it will recommend to the chief officer the charge which it considers should be preferred, giving reasons for its recommendation. Where the chief officer disagrees with the Authority's recommendation to prefer a disciplinary charge, he may enter into discussions with it but, in the last resort, if mutual agreement cannot be reached, the Authority has the power to direct the chief officer to bring specified disciplinary charges.

93. The following table shows the number of cases referred to the Police Complaints Authority (PCA) in 1987 and 1988 and the action taken. (Figures for earlier years are not available in this form, and it should be noted that the figures do not tally horizontally, as one case may feature under more than one category.)

		Outcome			
Year	No. of completed cases	Criminal charges	Disciplinary charges Total (PCA recommendations in brackets)	Advice, etc.	No action
1987	5 596	46	101 (15)	657	4 821
1988	5 548	50	111 (17)	655	4 296

Police disciplinary procedures - Scotland

94. In Scotland, the police discipline code is set out in schedule 1 to the Police (Discipline) (Scotland) Regulations 1967 (as amended). The procedures provide that, when a report, complaint or allegation is received from which it may reasonably be inferred that a constable may have committed a disciplinary offence, the deputy chief constable, in cases where the constable is of the

rank up to and including chief superintendent, sets in hand the necessary investigations and, in the light of the ensuing report from the investigating officer, decides whether the officer in question is to be charged with a disciplinary offence. For more senior ranks, the disciplinary authority is the police authority which is the relevant local authority. When a charge is made, the officer appears at a disciplinary hearing before his chief constable who has power, on finding guilt, to impose a punishment ranging from caution to dismissal from the force. The punishment of dismissal, requirement to resign or reduction in rank cannot be awarded by the chief constable unless the officer has been given the opportunity to elect to be legally represented at the hearing by counsel or a solicitor. In 1984, 244 police discipline cases were dealt with; the corresponding figures for 1985, 1986, 1987 and 1988 were 254, 265, 316 and 298.

95. In cases where it may reasonably be inferred that a constable has committed a criminal offence, the deputy chief constable is required to refer the matter as soon as possible for investigation by the Procurator Fiscal, who is independent of the police and acts impartially on behalf of the Crown. All these procedures are statutorily prescribed. The Procurator Fiscal will consider all the evidence before him and decide whether or not criminal proceedings should be taken. In reaching his decision, he may seek direction from Crown Counsel (senior legal advisers to the Lord Advocate). Thus the independent position and the active investigatory role of the Procurator Fiscal in cases involving possible criminal offences are seen as providing a full safeguard against any suspicion of police partiality in Scotland. A criminal conviction would not affect any decision to proceed with disciplinary proceedings. In circumstances where a case has not proceeded to trial or has resulted in an acquittal, it is still open to the deputy chief constable to pursue a disciplinary charge against a constable provided it complies with the terms of the regulations.

Police disciplinary procedures - Northern Ireland

96. In Northern Ireland, the police discipline code is set out in schedule 1 of the Royal Ulster Constabulary (Discipline and Disciplinary Appeals) Regulations 1988. These regulations were framed in light of the provisions made by the Police (Northern Ireland) Order 1987, which introduced procedures for handling complaints about the conduct of police officers and which were broadly in line with the new procedures introduced for England and Wales by section IX of the Police and Criminal Evidence Act 1984.

97. The 1987 Order established the independent Commission for Police Complaints for Northern Ireland, whose powers and function are broadly similar to those of the Police Complaints Authority for England and Wales. However, the Independent Commission has been given additional powers to reflect the particular circumstances of policing in Northern Ireland. For example, the Commission automatically receives copies of all complaints requiring formal investigation and can therefore "call in" those cases in which it may exercise its discretionary power to supervise the investigations; it can monitor the informal resolution of minor complaints; and it can supervise the investigation of any matter, not the subject of a complaint, which is referred to it by the Chief Constable, the Police Authority for Northern Ireland, or the Secretary of State for Northern Ireland.

Torture

98. The United Kingdom has ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force for the United Kingdom on 7 January 1989. Torture amounts to the intentional infliction of severe pain or suffering, physical or mental, at the instigation or with the consent or acquiescence of anyone acting in a public capacity, but excluding pain and suffering arising only from, inherent in or incidental to lawful sanctions. Most if not all such actions were already offences under United Kingdom law but, for the purposes of the Convention, torture was made a specific offence under section 134 of the Criminal Justice Act 1988.

99. The United Kingdom also ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on 24 June 1988. It came into force on 1 February 1989. The Convention provides for the appointment of an independent committee with full rights to enter places of detention and interview detained persons in private in order to ensure that torture or inhuman or degrading treatment does not take place. Places of detention include not only penal establishments but also police stations, detention centres operated by the Immigration Service, places of military detention and places where people are detained under the Mental Health Act. Election of committee members took place in September 1989 but no visits have yet taken place.

Corporal punishment

100. In 1982, the European Court of Human Rights ruled that the United Kingdom was in breach of the European Convention on Human Rights in failing to respect the philosophical convictions of parents who were opposed to the use of corporal punishment for their children in schools. In its second periodic report, the United Kingdom Government recorded its intention to introduce legislation which would give effect to the Court's judgement.

101. Sections 47 and 48 of the Education (No. 2) Act 1986 and an Order in Council for Northern Ireland abolished the use of corporal punishment in State-maintained schools. The law also exempts from corporal punishment most pupils at independent schools whose fess are met by the Government or by local education authorities. Regulations are due to be made which will effectively exempt the remainder of such pupils and those whose fees are met by other public bodies.

102. Corporal punishment in privately funded schools has not been made unlawful as such but, althouth no statistics are available, the Government believes that it is now rarely used. The Society of Teachers Opposed to Physical Punishment has stated that no girls' schools now use corporal punishment and that only 40 per cent of boys' schools continue to make the penalty available.

103. When the law changed, a number of applications to the European Commission of Human Rights which had arisen from the use of corporal punishment in State-maintained schools remained outstanding. The Government offered the applicants ex gratia payments on condition that they withdrew their applications. These offers have been accepted. The European Commission of Human Rights is currently considering the admissibility of further applications relating to corporal punishment in private schools.

Medical institutions

104. The United Kingdom has nothing to add to what was said in the second periodic report about protection of people in medical institutions.

Remedies

105. To sum up, and responding in particular to paragraph 1 of general comment 7/[16] (CCPR/C/21/Rev.1), persons who are being or have been subjected to ill-treatment have a variety of avenues of complaint which are largely or wholly independent of government. Where ill-treatment is proved, redress is available through the criminal law and, where officials are involved, through disciplinary codes. Victims of ill-treatment which causes physical injury are also able to avail themselves of compensation through the Criminal Injuries Compensation Board, awards of damages in the civil courts, and through compensation awarded in criminal actions.

106. The protection of detainees by proscribing incommunicado detention and the granting of access to visitors who can discover where detainees are held were discussed in the first periodic report. Training for the police and the prison service in England and Wales includes the treatment of detainees under the codes of practice issued under the Police and Criminal Evidence Act 1984 and the prison service's internal instructions, which reflect the standards set out in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Standard Minimal Rules for the Treatment of Prisoners. In Northern Ireland, detailed internal instructions to the police on the treatment and detention of arrested persons are already in place. When the Police and Criminal Evidence (Northern Ireland) Order 1989 comes into operation early in 1990, these instructions will be reinforced by codes of practice similar to those which currently apply in England and Wales under the Police and Criminal Evidence Act 1984.

107. These questions will also be discussed in the United Kingdom's first periodic report under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is due by 6 January 1990.

Arti[illegible] 9

Police and Criminal Evidence Act 1984 - England and Wales

108. The second periodic report briefly described the Police and Criminal Evidence Bill, which was enacted in 1984 and came into force on 1 January 1986. The Act codifies and in some respects extends police powers in respect of:

(a) Stop and search: the police may stop and search any person or vehicle for stolen or prohibited articles if they have reasonable grounds to suspect that such articles are being carried;

(b) Entry and search of premises and seizure of evidence;

(c) Arrest: the police may arrest anyone without a magistrate's warrant in respect of an arrestable offence, i.e. one that carries a penalty of five years' or more imprisonment, or in respect of any lesser offence if certain specified conditions, which make the service of a summons

inappropriate or impracticable, are met. These conditions apply, for instance, where arrest is necessary to prevent the person from causing physical harm to himself or others, or from damaging property, or from causing an unlawful obstruction of the highway;

(d) Detention: the policy may detain for questioning a person who has been arrested, normally up to 24 hours without charge. In the case of a serious arrestable offence, however, and upon the authority of a senior officer (superintendent or above) a suspect may be detained for up to a further 36 hours in order to obtain or secure evidence; and, on the authority of a magistrate, they may hold him for up to a further 36 hours. At the expiry of these periods, they must either charge him and bring him before a magistrates' court as soon as possible or bail him to appear in court; or release him without charge, either on bail or without bail;

(e) Questioning: the police may search all those in police custody. Upon the authority of a senior officer (at least superintendent), and with the suspect's consent, they may carry out intimate searches (of the body orifices) for class A drugs, as set out in the Misuse of Drugs Act 1971, as amended, or for articles which might be used to cause injury. They may take fingerprints without the suspect's consent in certain circumstances; similarly, they may take non-intimate samples without the suspect's consent if certain conditions are met.

109. These extensive powers are balanced by a number of important rights for the suspect, which are contained in the Act and elaborated in the codes of practice made under the Act. The principal safeguards are:

(a) Records of searches must be made;

(b) The suspect must be told that he is being arrested, given the reason for his arrest and cautioned (advised that he does not have to say anything or answer any questions); thus the Act gives effect to longstanding common law rules in this respect;

(c) The post of custody officer has been introduced. He is responsible for initially authorizing the detention of a person in police custody and for ensuring that all those in police detention are treated in accordance with the Act and codes of practice and that custody records are kept on each person detained. He is also responsible for ensuring that the suspect is advised of his rights, e.g. the right to consult a solicitor;

(d) The suspect is entitled to have one person notified of his arrest and may consult a solicitor privately at any time if he wishes. The exercise of these rights may be delayed for up to 36 hours in cases involving serious arrestable offences (48 hours in the case of terrorist suspects) on the authority of a superintendent or above. In the case of R. v. Samuel the Court of Appeal held that the discretion of the police to delay access to a solicitor must relate to the specific circumstances of the case;

(e) The detention periods are subject to periodic reviews and after 36 hours to the sanction of the court;

(f) Special provisions for the treatment of juveniles, in particular that their parent or guardian should be informed of their detention and that they should not be interviewed except in the presence of an appropriate (independent) adult. There is also a requirement for an appropriate adult to be present during an interview of a mentally ill or mentally handicapped person;

(g) If a suspect is charged with an offence, he must be given a written notice showing particulars of the offence in simple language as soon as he is charged. He is also cautioned again that he need not say anything;

(h) By the end of 1991, tape recording of interviews with suspects will become mandatory.

110. There is in addition the overall general safeguard contained in section 78 of the Act, which provides that prosecution evidence which is unfairly obtained may be ruled inadmissible by the court. Any breach of the Act or codes of practice may make the evidence so obtained inadmissible, although exclusion of evidence will not always automatically follow every breach. It is, however, a powerful reinforcement of the suspect's rights.

111. The Police and Criminal Evidence Act 1984 applies only to England and Wales. Nevertheless, similar legislation, together with appropriate codes of practice, will come into operation in Northern Ireland eary in 1990.

112. Detention under the Prevention of Terrorism (Temporary Provisions) Act 1989 is now subject to reviews similar to those carried out in respect of persons detained under the Police and Criminal Evidence Act 1984 mentioned above (para. 109 (e)). The review system took effect on 1 September 1989. This followed a recommendation of an independent reviewer, Lord Colville QC, who looked at the legislation on prevention of terrorism. These new reviews must be carried out by a police officer of at least the rank of inspector or, where the person has been detained for over 24 hours, by a superintendent. The review scheme is statutory and applies throughout the United Kingdom; it was brought into force on 1 September 1989 and applies to detentions at ports (schedule 5 to the 1989 Act) as well as to arrests made under section 14 of the Act. The police officer reviewing the detention is required to consider the need for continued detention and, where appropriate, the need to withhold the right of the detained person to have someone informed of his arrest and to see a solicitor.

Police powers in Northern Ireland

113. The powers of the police in dealing with non-terrorist crime are similar to those in England and Wales; the Police and Criminal Evidence (Northern Ireland) Order 1989 contains largely equivalent provisions to those in the Police and Criminal Evidence Act 1984. Police procedures will similarly be govered by statutory codes of practice: the principal differences concern the right to silence (see paras. 214-216 below) and the taking of intimate body samples.

114. The powers of the police and army in Northern Ireland in relation to terrorist-related crime are governed by the Prevention of Terrorism (Temporary Provisions) Act 1989 and the Northern Ireland (Emergency Provisions) Acts 1978 and 1987. The Emergency Provisions Acts are subject to annual renewal and

have a maximum duration of five years. Since their inception in 1978, the Acts have been regularly reviewed by an independent reviewer to establish which provisions remain necessary to deal effectively with terrorism while preserving the liberties of the individual. The main provisions are as follows:

(a) Create a class of "scheduled", i.e. terrorist-type offences and provide that they should be tried before a court sitting without a jury. There are compensating safeguards for the defendant in the form of a requirement for a written judgement and an automatic right of appeal;

(b) Require bail applications in scheduled cases to be heard before a judge (rather than a magistrate) and considered against strict criteria;

(c) Reverse the initial onus of proof in scheduled cases involving the possession of prescribed articles;

(d) Provide that confession evidence should be admissible in scheduled cases except where obtained as a result of torture or inhuman or degrading treatment, and provide for the admissibility of written statements in scheduled cases;

(e) Confer a time-limited power of arrest in respect of "any offence" on members of the armed forces;

(f) Give the security forces a comprehensive range of powers to stop, enter, search and seize and to interfere with highways;

(g) Create a class of proscribed organizations, membership of which is an offence.

115. The Emergency Provisions Act 1987 incorporated a number of changes to protect the rights of individuals. The maximum period for which the police in Northern Ireland can hold a suspected terrorist on their own authority was reduced from 72 hours to 48 hours; certain arrest powers were amended so that all such powers under the emergency law now require reasonable grounds for suspicion; and persons detained in Northern Ireland under the Prevention of Terrorism (Temporary Provisions) Act 1989 were given a statutory right to have someone notified of their arrest and whereabouts, and to have access to legal advice.

Police powers in Scotland

116. The general powers available to the police in Scotland are established primarily under common law, supplemented by various statutory provisions. The main police powers in Scotland are as follows:

(a) Stop and search: the police may stop and search any person or vehicle for stolen property if they have reasonable grounds to suspect possession of such articles;

(b) Entry and search of premises and seizure: the police may enter premises without a warrant on hearing a serious disturbance inside, or in close pursuit of a person in respect of a serious crime, and may use reasonable force to gain entry if refused admission. The police are not

generally empowered to enter premises without a warrant, although they may do so in the case of a very serious crime and great urgency. Having obtained a warrant from a justice, the police may enter premises, if necessary by force, and search them for items relating to the specific offence, and may seize any such items bearing on the presumed guilt of the suspect. The police may search any person who has been formally apprehended;

(c) Detention: the police may detain for questioning a person in respect of an imprisonable offence, but the detention may not last longer than six hours, at the end of which time the suspect must either be charged or released, and he may not be detained again in connection with the same offence;

(d) Questioning: every person who is detained in policy custody may be searched. Once a person has been arrested and charged, he may not be questioned further about the alleged crime, although he may make a voluntary statement which would be admissible as evidence. A person detained for questioning but not charged need not answer any questions put to him beyond signing his name and address.

117. The rights of the suspect are also largely established at common law, and include the following safeguards:

(a) On detention by the police, the suspect must be told the general nature of the offence under investigation;

(b) Records must be kept of the time of detention, release or charge, and notification of the suspect of his rights;

(c) The suspect must be informed of his right to have one person notified of his detention or arrest without delay and may consult a solicitor privately if he wishes. This right may be delayed only in exceptional circumstances in the interests of the investigation or prevention of crime;

(d) There are special provisions relating to the detention of juveniles under 16 whereby the police must immediately inform the parents or guardian and allow them access to the child. This right may be delayed only if the parents or guardian are suspected of having been involved in the crime in question;

(e) It is hoped that by the early 1990s facilities will be available to enable the tape-recording of all Criminal Investigation Department (CID) interviews in Scotland, and it is intended that this facility shall subsequently be extended to other categories of police interviews.

118. Under common law in Scotland, any statement made by a suspect in answer to a police question will be admissible in evidence only if it can be shown to have been obtained fairly. Whether the evidence is held to have been obtained fairly will be determined on the basis of all the circumstances of the questioning in the individual case.

Medical detainees

119. The United Kingdom does not have anything to add to what it said in the second period report about those detained under the Mental Health Act 1983.

Persons subject to immigration control

120. The detention of persons subject to immigration control is governed by the provisions of the Immigration Act 1971. The power to detain is used as a last resort, when there are clear and positive grounds for believing that the person will abscond if left at liberty, and after all the known circumstances of the person concerned have been taken into account. The cases of those detained are given the highest priority and the need for continued detention is regularly reviewed.

121. In the circumstances described below, a person detained under the provisions of the Immigration Act 1971 may apply to the independent immigration appellate authorities for bail. The appellate authorities were established in 1970 under the Immigration Appeals Act 1969; their function is to hear appeals against decisions of the Secretary of State or an immigration officer, and applications for bail under the provisions of the 1971 Immigration Act (as amended by the Immigration Act 1988). They may allow an appeal if they consider that the decision against which the appeal was brought was not in accordance with the law or, in cases which are not subject to a restriction on the right of appeal (see arts. 12 and 13 below), if they consider that, where the decision involved the exercise of discretion, that discretion should have been exercised differently. The appellate authorities may require sureties to be provided before deciding to release a person on bail and may refuse to release on bail a person who has previously failed to comply with the conditions of bail or is likely to commit an offence if released. There are two tiers of appellate authority, namely, adjudicators, who hear nearly all appeals at first instance, and the Immigration Appeal Tribunal, which hears, with leave, appeals from decisions of adjudicators. The Lord Chancellor's Department has had full administrative responsibility for the appellate authorities since 1987.

122. Persons detained as the subject of deportation proceedings may apply to the independent appellate authorities for bail while an appeal is pending against the decision to make a deportation order, or against the destination on deportation. A person who has a right of appeal while in the United Kingdom against the decision to refuse him leave to enter or against the decision that he requires leave to enter may apply for bail. Those who are detained for more than seven days pending a decision to give or refuse leave to enter the United Kingdom may also apply. In all cases, however, where a person is detained under powers contained in the 1971 Act, habeas corpus may be sought from a court.

123. Advice and assistance in presenting appeals before the independent appellate authorities is available free of charge from the United Kingdom Immigrants Advisory Service (UKIAS), which receives support from public funds but is independent of government control.

124. The numbers detained under deportation and illegal entry powers in the years 1986-1988 are set out below; such statistics are published regularly in the annual reports of the Home Office Immigration and Nationality Department. The large increases in the numbers detained in 1988 reflect the greater number of cases dealt with as a result of more effective enforcement procedures, including the increased use of supervised departures following the new powers in the 1988 Immigration Act (see paras. 187-195 below, particularly para. 189). The great majority of those detained were held for less than a month. There are no statistics specifically on the numbers of detainees who apply for bail.

Detention under deportation powers

Length of detention	Persons detained 1986	1987	1988
Less than 1 month	322 (62%)	259 (46%)	746 (71%)
1 to 2 months	132 (25%)	169 (30%)	186 (18%)
2 to 3 months	38 (7%)	66 (12%)	52 (5%)
Over 3 months	30 (6%)	66 (12%)	60 (6%)
	522 (100%)	560 (100%)	1 044 (100%)

Detention of illegal entrants

Length of detention	Persons detained 1986	1987	1988
Less than 2 weeks	494 (58%)	659 (59%)	1 317 (76%)
2 weeks to 1 month	241 (29%)	252 (24%)	186 (10%)
1 to 2 months	57 (7%)	103 (9%)	120 (7%)
2 to 3 months	21 (2%)	33 (3%)	40 (3%)
Over 3 months	30 (4%)	56 (5%)	72 (4%)
	843 (100%)	1 103 (100%)	1 735 (100%)

Unlawful arrest or detention - compensation

125. Persons who have been detained in custody without lawful authority may take action at law to seek redress and may apply to the Secretary of State for an ex gratia payment of compensation. Where a person has been held in custody charged with an offence which has subsequently not been pursued, or where there has been an acquittal at court or on an appeal made within the normal time-limits, an application may be made for an ex gratia payment of compensation. The basis on which such claims are considered was outlined in a statement made by the Home Secretary on 29 November 1985. Payment will be considered only where the detention has resulted from serious default on the part of a member of the police or some other public authority, or in other exceptional circumstances, for example where facts emerge at trial which completely exonerate the accused. Applications for compensation will not be considered simply because, at trial, or on appeal, the prosecution was unable to sustain the burden of proof beyond a reasonable doubt in relation to the charge brought. If payment of compensation is agreed in principle, the amount to be paid will be determined by an independent assessor.

126. In 1986, ex gratia payments of compensation in respect of unlawful detention were made in five cases. There were six such payments in 1987 and five in 1988. In those cases where persons had been held in custody charged with an offence not subsequently pursued or had been acquitted at court or on appeal, eight ex gratia payments were made in 1986, eight in 1987 and three in 1988 (see also paras. 212-213 below).

Compensation for harm sustained by detained persons

127. A detained person is no longer required, when offered ex gratia payment of compensation in respect of harm sustained during detention, to sign a waiver restricting his right to take other forms of action.

Article 10

Prisons

128. In summer 1989, the United Kingdom had a prison population of about 55,600, or 98 per 100,000 inhabitants. The population reached its highest level of 57,500 at the end of November 1987, having increased from 49,200 at the end of July 1984.

129. In summer 1989, England and Wales had a prison population of about 49,128 or 97 per 100,000 inhabitants, an increase of 7,000 since summer 1984. The population reached its highest level in recent years of 51,239 in July 1987. In summer 1989, Scotland had a prison population of about 4,997, or 98 per 100,000. The population reached its highest level of 5,797 in March 1986, having increased from 4,465 since summer 1984. In Northern Ireland, the prison population in summer 1989 was about 1,745, or 110 per 100,000. This is in line with the falling prison population in the province from its peak of 2,945 in 1978.

130. The figures for Scotland and England and Wales represent a relatively high prison population in comparison with other European countries with similar crime problems, and it results in serious overcrowding in many prisons, some of which are having to hold more than double the number of prisoners for which the accommodation is intended. In Northern Ireland, there is already a high percentage of single cell occupancy in all the province's penal establishments.

131. Paragraphs 164 and 165 below describe the Government's programme for building new prisons in England and Wales, but the Government is equally concerned both to reduce the number of people who receive prison sentences and the number who are remanded in custody before trial.

132. A government Green Paper, "Punishment, custody and the community", was published in July 1988 setting out for discussion a number of proposals under which community-based measures could be used more extensively for those who received prison sentences at present, and also more effectively in terms of future offending and hence of levels of crime more generally. It drew attention to the substantial fall which had already taken place in the number of juveniles sentenced to custody (a reduction of about one half in six years, with no increase in known juvenile offending), and suggested that similar efforts should be made in relation to offenders aged between 17 and 20. The Government is now considering reactions to the Green Paper and will announce its conclusions and its proposals for further legislation later this year. The number of young people in custody in England and Wales had already fallen by about 1,000, or 9 per cent, between mid-1988 and mid-1989. A slightly greater percentage fall over the same period was evident in Scotland.

133. Major reviews have also been undertaken of the present system of remission and parole. A system of parole was first introduced in Great Britain under the Criminal Justice Act 1967 as a means of ensuring the earlier release of prisoners who need not be detained. Prisoners became eligible for release on parole after serving one third of their sentences or 12 months, whichever was the longer, and parole boards were established to consider prisoners' suitability for release and to make recommendations to the Secretary of State accordingly. Criteria included the prospects for an offender's resettlement in the community and the likelihood that he would commit further offences.

134. The parole system does not operate in Northern Ireland, where the high proportion of terrorist-type offenders makes the element of supervision inherent in such a system impossible to apply. Until early 1989, all prison sentences in Northern Ireland attracted 50 per cent remission, but offenders released remained liable to be returned to prison to serve the unexpired portion of their sentence if they were subsequently convicted of further crime (see para. 170 below). In addition, in Northern Ireland there operates a system of unescorted pre-release home leave for prisoners serving sentences of six months or more.

135. Various changes were made in England and Wales in the period which followed the 1967 Act, including in 1983 a reduction in the minimum qualifying period from 12 months to 6, and the introduction of more restrictive criteria for the grant of parole for prisoners serving long sentences for serious offences. Restrictive criteria for the grant of parole for the latter were introduced in Scotland in 1984.

136. By 1987, it had become clear that serious anomalies had developed in the system and that it was no longer operating satisfactorily in a number of important respects. A committee was therefore established under the chairmanship of Lord Carlisle of Bucklow to examine the operation of the parole system in England and Wales, and the committee reported in November 1988. The report made a number of wide-ranging recommendations for improving the system, including changes both in the structure and in the decision-making process to make it more open. The Government is now considering these recommendations and will similarly announce its conclusions, and proposals for new legislation, later in the year. The Government is also considering the report of a committee established to consider the parole system in Scotland under the chairmanship of Lord Kincraig, which was published in March 1989.

137. Measures to reduce the prison population have not been confined to sentenced prisoners, and a number of initiatives, typically involving bail hostels and bail information schemes, have been taken to reduce the numbers sent to prison on remand. The remand population in England and Wales fell by about 1,000, or about 7.5 per cent, between September 1988 and August 1989.

138. Paragraphs 31-33 of the second periodic report described changes which had been made extending the right of prisoners to make complaints in their correspondence without having submitted those complaints to the prison authorities, particularly by the replacement of the so-called "prior ventilation rule" by the "simultaneous ventilation rule", and by the abolition of all such restrictions in the case of prisoners' correspondence with their legal advisers. As already noted above (para. 77), in England and Wales the

"simultaneous ventilation rule" has itself been abolished, with the result that prison regulations no longer impose any restrictions on the circumstances in which inmates may make complaints in their correspondence, and the former disciplinary offences of making a false and malicious allegation against an officer or repeatedly making groundless complaints have also been abolished in England and Wales and are under consideration in Scotland.

Young offenders - England and Wales

New unified custodial sentence

139. Under the Criminal Justice Act 1988, a new sentence of detention in a young offender institution was made available to the courts. It came into effect on 1 October 1988, and replaced youth custody and detention centre sentences that had been available for male offenders aged 14 and under 21, and female offenders aged 15 and under 21. (Offenders sentenced under section 53 of the Children and Young Persons Act 1933 for certain grave offences and those sentenced to custody for life under section 8 of the Criminal Justice Act 1982 will continue to be the subject of separate arrangements of detention.) There has been no change since the last report in respect of the minimum and maximum sentences available to the courts in respect of male and female young offenders.

140. The Act strengthens the restrictions on the use of custodial sentences for young offenders introduced by the Criminal Justice Act 1982. It simplifies the sentencing powers available to the courts, enables more efficient use to be made of the accommodation designated for sentenced young offenders, and also allows offenders to be placed in establishments which can offer the most appropriate régime for their needs. These arrangements generally provide for offenders aged 14 to 16 to be held separately from those aged 17 to 20.

141. The Government recognizes that young offenders have more capacity for positive change and, recognizing the particular problems they face on release, have made it the principal aim of young offender institutions in England and Wales to help prepare offenders for their return to the outside community (see the Young Offender Institution Rules 1988 listed in the annex to this report). Emphasis is placed on:

(a) Provision of a programme of activities, including education, training and work, designed to assist offenders to acquire or develop personal responsibility, self-discipline, physical fitness, interests and skills and to obtain suitable employment after release;

(b) Fostering of links between the offender and the outside community; and

(c) Co-operation with the services responsible for the offender's supervision after release.

142. The period in custody is not regarded in isolation, but as part of a sentence which includes an automatic period of supervision in the community by the Probation Service or the Social Services Department after release.

Secure accommodation for children - England and Wales

143. The legislation governing the provision and use of secure accommodation for children is contained in:

(a) Section 20A of the Child Care Act 1980 (as amended by para. 50 of schedule 2 of the Health and Social Services and Social Security Adjudications Act 1983);

(b) The Secure Accommodation (No. 2) Regulations 1983;

(c) The Secure Accommodation (No. 2) (Amendment) Regulations 1986.

The two sets of regulations referred to above were made by the Secretary of State under powers conferred on him by section 20A of the Child Care Act 1980.

144. Secure accommodation is provided in local authority community homes for children to accommodate those children who cannot be cared for properly in non-secure conditions. It therefore follows that the use of such accommodation should be a last resort. Secure accommodation may be used for any children who are in the care of a local authority or who have been remanded to the care of a local authority while awaiting trial, provided they meet the necessary criteria (see below). Its use is not restricted to those accused or convicted of a crime and it is not designed as a punishment. Secure accommodation forms part of the child care system, not part of the penal system.

145. A child may not be placed in secure accommodation unless he/she meets very strict criteria. These are set out in the Secure Accommodation (No. 2) Regulations 1983. A local authority may, if these criteria are met, hold a child in secure accommodation for up to 72 hours at a time or for 72 hours in any 28-day period. It may not hold the child for longer without obtaining authorization (a "secure order") from a juvenile court. The court may make a secure order for up to three months in the first place. If the use of secure accommodation beyond that period is still considered necessary by the local authority, it must ask the juvenile court to renew the order for periods of up to six months at a time. If a juvenile court is considering whether to make or renew a secure order, the child must be advised of his right to legal representation and must be represented in court unless: (a) he applied for legal aid and was refused it on the grounds that his means were such that he did not appear to require legal aid, or (b) he was told about his right to apply for legal aid and had the opportunity of applying but failed or refused to do so. If a secure order is made by a juvenile court, the child has the right to appeal to a higher court against this decision.

146. The use of a secure order by the local authority is discretionary, and no local authority should keep a child in secure accommodation, even if a secure order exists, once that child has ceased to meet the "secure accommodation" criteria. For this reason, the circumstances of any child held in secure accommodation must be reviewed by the appropriate local authority at least once every three months to decide whether it is still necessary to hold that child in secure accommodation. In doing so, the local authority must consider the views of the child and his parent or guardian.

147. All secure accommodation must be approved by the Secretary of State for Health. Approval is usually given for up to three years at a time. Inspectors from the Department of Health inspect each secure unit (of which there are 43 in England), every year or so; in doing so they take account both of the quality of the care provided and of the condition of the premises.

148. The system of secure accommodation complies with article 10 of the Covenant. Children are treated with dignity: the aim is to use good child care practice to enable children to start tackling their problems and, as soon as possible, to enable them to be cared for in non-secure conditions. They are not detained with adults (secure accommodation being part of the child care system). As regards paragraph 2 (a) of article 10, convicted youngsters are not segregated from others requiring secure accommodation. This is because secure accommodation is, as mentioned, part of the child care system, not part of the penal system. If separate secure units were set up for convicted children, both children and staff would be likely to see them as part of the penal system. The child would be more likely to regard the making of a secure order as a punishment, and less receptive, as a result, to the efforts of the staff to help him. It must also be stressed that convicted children, like other children, should not remain in secure accommodation once the relevant criteria have ceased to apply.

Correspondence and visits and the practice of religion

149. Young people in custody are entitled to at least two visits per month, although restrictions may be imposed as to the persons who may visit them. Their correspondence is subject to censorship, but in practice not more than 5 per cent - and at lower security establishments none - of their correspondence is normally censored. Convicted adults are entitled to a visit every four weeks and those on remand can be visited every day, Monday to Saturday (Tuesday to Saturday in Northern Ireland). In March 1988, the privilege whereby an unconvicted prisoner could have food or drink sent in from outside the prison was abolished.

150. All prisoners, of whatever faith, are entitled to practise their religion in prison. Visiting ministers are appointed in each prison to cater for the needs of prisoners of particular faiths and the dietary requirements of prisoners are met to the fullest extent practicable. Prisoners are not obliged to work on their sabbath or holy days. Guidance has been issued to prison staff detailing the main tenets and practices of the major world religions.

Disciplinary matters

151. There have been several developments since the last report in the system in England and Wales for adjudication of disciplinary offences committed by inmates in prison. The departmental committee which the Home Secretary announced in October 1983 would be set up to look at the adjudication system, described in paragraph 37 of the second periodic report, reported in October 1985. This committee made a number of far-reaching proposals, including the setting up of independent prison disciplinary tribunals to take over from prison boards of visitors the role of hearing more serious disciplinary charges, changes to the code of disciplinary offences, and a reduction in the maximum amount of loss of remission of sentence that boards of visitors could award.

152. The proposal for independent disciplinary tribunals was developed in a government White Paper published in October 1986, but it did not prove possible to reach agreement on the composition and role of the new tribunals. It was therefore decided in 1987 that boards of visitors should continue to conduct adjudications, but that better training and qualified clerks should be provided to assist boards in this function. Board members have now received intensive training in the revised disciplinary rules and procedures (see below), and their future training needs are currently under review. It is proposed that the boards should be provided with clerks drawn from local magistrates courts and qualified to take the full range of magistrates courts' hearings. The clerks will take the record of hearings and offer procedural and legal advice to the board. A 12-month pilot scheme, involving a small number of prisons, is planned to begin later this year. If the scheme proves successful, it is intended that all boards should in due course be provided with qualified clerks on a similar basis.

153. Following the main recommendations of the departmental committee, a new code of disciplinary offences for inmates came into force in England and Wales on 1 April 1989. A number of charges have been omitted from the new code, including those of making false and malicious allegations against an officer and repeatedly making groundless complaints. In addition, there is no longer a charge of mutiny, and the offences that were automatically classified as grave or especially grave have been removed. New offences have been introduced to cover specific behaviour such as hostage-taking, barricading, fighting, obstructing a prison officer and endangering the personal safety of others. The principal aim of the revision throughout has been to simplify and clarify the range of offences.

154. The maximum loss of remission that a board of visitors can award was reduced on 1 April 1989. The maximum punishment for an adult offender in England and Wales was reduced from 180 days to 120 days on a single charge, and for the first time a maximum for a series of charges arising from one incident was set, at 180 days. The maximum for young offenders in England and Wales was set at 90 days for a single charge and 135 days for a series of charges arising from one incident.

155. Since 1 April 1989, the Home Secretary has the power to quash findings in England and Wales if he believes the findings unsatisfactory. Previously there was only a power to remit the punishment, which technically left the finding of guilt on the prisoner's record.

156. Since the last report, a judgement by the House of Lords in the case of Leech v. Deputy Governor of Parkhurst Prison (1988) and Prevot v Deputy Governor of Long Lartin Prison (1988) had the effect of making governors' adjudications directly reviewable by the courts, in the same way as board of visitors' adjudications have been reviewable since the case of R v Board of Visitors of Hull Prison ex parte St. Germain (1978).

157. The written guidance on the conduct of adjudications has been completely revised and updated and forms the basis of training for governors and boards who conduct adjudications. The guidance manual has been published; it is therefore available not only in prison libraries, as it has always been, but prisoners may also purchase their own copy to keep in their cells.

158. While the system in Northern Ireland is similar to that in England and Wales, the Scottish system of adjudications does not parallel that in England and Wales. Visiting committees, the Scottish equivalent of boards of visitors, have played no part in the adjudication system since 1986. If prison governors, with a maximum power to award 14 days' loss of remission, do not deal with the charge, the matter is referred to the police and ultimately dealt with in court. However, the comprehensive review of the Scottish prison rules referred to in paragraph 77 above will take account of the recommendations of the Home Office Departmental Committee and of the changes which have been made in England and Wales to the code of disciplinary offences. A working group is at present drafting a new manual of guidance for governors on the conduct of adjudications in Scottish prisons. This manual should be available in 1990.

Access to prison regulations

159. In England and Wales, prison standing orders are being published in a continuous programme which is expected to be completed by spring 1990. Once published, they too are placed in libraries and are available for purchase by prisoners. The standing order on adjudications in England and Wales has been published for the first time. In Scotland, standing orders are about to be revised. At present, standing order H, which covers communications, is available for purchase by prisoners.

Staff discipline

160. All staff working in prisons, remand centres and young offender institutions are subject to the criminal law. Where prima facie evidence exists of a criminal offence against an inmate's person or property, the police would be invited to investigate. Conviction for such an offence would normally result in dismissal.

161. Staff are also subject to internal disciplinary procedures. These provide for a number of offences such as unnecessary exercise of authority, provoking a prisoner, and unnecessary or undue use of force. It would also be possible to take disciplinary action against a member of staff who failed to comply with prison rules or prison standing orders. The awards available to the Prison Department include warnings, reprimands, special probation, forfeiture of increments, reduction in rank and dismissal.

162. During the last five years, there have been 17 cases in England and Wales which fell into the various categories mentioned above and which attracted the full range of awards.

Police custody

163. All persons detained in policy custody in England and Wales have the same rights as all other members of the public, under part IX of the Police and Criminal Evidence Act 1984, to lodge a formal complaint if they feel they have been treated unfairly or improperly in any way by a member of a police force. Similar rights extend to members of the public and to persons detained by the police in Northern Ireland under the terms of the Police (Northern Ireland) Order 1987. The procedures are explained in this report, in the comments

relating to article 7. The Police and Criminal Evidence Act 1984 does not apply to Scotland, but similar rights of complaint apply in Scotland. An explanatory leaflet is available at all police stations indicating the various avenues through which a complaint may be made.

Prison conditions

England and Wales

164. The Government is committed to reducing overcrowding in prisons in England and Wales, and has embarked on the largest ever prison building programme. In the 10 years between 1985 and 1995, 28 new prisons will have been built in England and Wales, 8 of which have now opened. Together with additions and improvements to existing establishments, 25,000 new places will have been added to the prison estate by the mid-1990s. Prison design has been rethought. A new prison design brief for training in prisons was published in March 1989 and will form the basis for all future prisons of this type. The new design lays stress on creating as normal an environment as possible within the demands of security and on encouraging relationships between prisoners and staff. The design combines what has been learned from Victorian, 1970s and "new generation" designs. The building programme also covers the refurbishment and modernization of existing establishments, including the upgrading of facilities, the creation of extra places and the provision of access to sanitation.

165. The provision of access to sanitation is a major objective of the present building programme, and all new prisons have in-cell sanitation. In February 1989, the Home Secretary announced that in-cell sanitation was to be installed in many existing cells during the next seven years. This programme, together with other refurbishment work already scheduled, will reduce the 22,000 places without access to sanitation to about 8,000 by the end of the century. To achieve this, the Prison Service is using a range of methods to install sanitation and, wherever possible, schemes are being used which do not involve the displacement of large numbers of inmates while the work is being done.

Scotland

166. An extensive exercise is being carried out to identify existing deficiencies in the prison estate with a view to improving the standard of available accommodation. As in England and Wales, providing access to night sanitation is a priority and efforts will be made to provide for a majority of inmates to have their own cells.

Detention in police cells

167. As a result of overcrowding and industrial action by the Prison Officers' Association in England and Wales, some prisoners (most on remand) have been held in police cells pending their admission to prison.

168. The law explicitly provides that prisoners may be held in this way where it is not immediately practicable to secure their admission in a Prison Service establishment. This is designed to provide a measure of last resort at times of exceptional pressure: police cells are not regarded as an alternative source of accommodation for prisoners and their use for this

purpose is extremely unsatisfactory. Rigorous measures have been taken to avoid the use of police cells for prisoners who ought to be in prison custody, and the number of prisoners in police cells had fallen to under 20 at the time of this report.

Remission and parole

169. Detention in police and prison custody before sentencing counts towards the completion of any custodial sentence subsequently imposed. In Northern Ireland, detention in police custody before sentencing will count towards the completion of any custodial sentence subsequently imposed once article 49 of the Police and Criminal Evidence (Northern Ireland) Order 1989 is brought into operation early in 1990. Inmates serving a sentence of 12 months or less in England and Wales are eligible for half remission; those servicing longer determinate sentences may receive one-third remission, but are also eligible for release on parole. Prisoners in Scotland are eligible for one-third remission. Remission may be forfeited only if this is ordered for an offence against prison discipline, the adjudication of which has to conform to statutory rules and is subject to judicial review by the courts. The arrangements for remission and parole in England and Wales and in Scotland have been the subject of the major reviews described in paragraphs 133 to 136 above. Parole is not available in Northern Ireland, but all inmates are eligible for half remission whatever their length of sentence, except as provided in paragraph 170 below.

170. In 1988, following growing concern about re-offending rates in Northern Ireland, particularly those of terrorist-type offences, the 50 per cent remission rate applied there (see para. 134 above) was reviewed. Section 22 of the Prevention of Terrorism (Temporary Provisions) Act 1989, which came into force on 16 March 1989, applied to persons convicted and sentenced to five years or more for a scheduled offence committed on or after that date. In addition, the Act requires a court to reactivate in its entirety the unexpired portion of any previous prison sentence should an offender be convicted of a scheduled offence attracting a sentence of imprisonment of more than one year. Such a period of reactivation must be served before commencement of an additional sentence, and does not attract remission.

Reservation

171. The Government supports in principle the requirement under article 10, paragraphs 2 (b) and 3 of the Covenant that detained juveniles should be separated from adults. The Prison Service in England and Wales also recognizes a third group of offenders: young adults aged 17 to 20. It is in general the policy to accommodate all three groups separately. There are certain circumstances, however, where the mixing of offenders in these groups is considered appropriate, for example (in some instances) to provide a balanced institutional community, or to allow access to particular facilities. In the latter circumstances, steps are taken to ensure that inmates from different groups are kept apart as far as possible.

Article 12

Entry

172. The Government reserves the right to continue to apply such immigration legislation governing entry into, stay in and departure from the United Kingdom as it may deem necessary from time to time and, accordingly, its acceptance of article 12, paragraph 4, and of the other provisions of the Covenant is subject to the provisions of any such legislation as regards persons not at the time having the right under the law of the United Kingdom to enter and remain in the country. The United Kingdom also reserves a similar right in regard to each of its dependent territories.

173. The position at the time of the second periodic report was as follows. The British Nationality Act 1981 had replaced the status of citizen of the United Kingdom and Colonies (CUKC), created by the British Nationality Act 1948, by three separate citizenships:

(a) British citizenship: for those closely connected with the United Kingdom; acquired mainly by birth in the United Kingdom of a parent who is a British citizen or settled there;

(b) British Dependent Territories citizenship (BDTC): for persons connected with the dependencies;

(c) British Overseas citizenship (BOC): for those CUKCs not having the above connections with the United Kingdom or dependencies;

the 1981 Act had also preserved the status of:

(d) British subject: mainly persons born before 1949 who did not subsequently become a CUKC or a citizen of a Commonwealth country; and

(e) British Protected Person (BPP): persons connected with former protectorates or former trust territories;

subsequently, however, a new category of citizenship was created on 1 July 1987 by the Hong Kong (British Nationality) Order 1986:

(f) British Nationals (Overseas) (BNO): persons who are BDTCs solely by connection with Hong Kong, who may then apply to register as BNOs before 1 July 1997.

174. Those in categories (b)-(f) do not have the right of abode and are subject to immigration control. The replacement of the status of CUKC by a new citizenship was intended to reflect more accurately the strength of the connection with the United Kingdom or the dependent territories.

175. Since the second periodic report, the Immigration Act 1988 has introduced two changes which are relevant to article 12. The first concerns entry by persons claiming the right of abode. The Immigration Act 1971, as amended by the British Nationality Act 1981, did not require certain categories of people to prove their claim to the right of abode by means of a certificate of entitlement or a British passport confirming that right. This was not a matter of concern while the numbers involved were small and their claims could

be confirmed by other means on arrival. However, the numbers who sought to exploit these provisions indicated that this provided an avenue for the potential abuse of the control that could not be ignored. The Government decided to close this loophole by providing, in section 3 of the Immigration Act 1988, that anyone claiming a right of abode in the United Kingdom must establish that claim either by producing a certificate of entitlement or a British passport confirming his or her right of abode. There is no right of appeal before removal against any decision that such a person requires leave to enter if he arrives without either document. This is consistent with the general approach adopted under the 1971 Act and the Immigration Rules that those seeking to settle in the United Kingdom should establish their entitlement to do so before they set out. There is, of course, a right of appeal abroad against refusal of a certificate of entitlement.

176. The second development relates to polygamous marriages. With effect from 1 August 1988, a woman with a right of abode by virtue of a marriage which is polygamous may not exercise that right if another wife of the same husband has preceded her to the United Kingdom, or has been granted a certificate of entitlement granting right of abode, or has a prior application pending. This restriction has been imposed because polygamy is regarded as unacceptable in the United Kingdom. It places a polygamous husband in the same position as a monogamous one in that, once a man has been joined by a wife, he may not bring in another unless the first dies or the marriage is terminated. Before this reform, only about 120 wives of polygamous marriages were being admitted each year.

Exit

177. There is no statute law and very little case law in the United Kingdom on the grant and refusal of passports. Refusal of passport facilities is confined in practice to certain clearly defined classes of individuals:

(a) Minors whose journey is known to be contrary to a court order, to the wishes of a parent or other person or authority awarded custody or care and control, or to the provisions of section 25 (1) of the Children and Young Persons Act 1933 (as amended by section 42 of the Children and Young Persons Act 1963), or section 56 of the Adoption Act 1976;

(b) Persons for whose arrest a warrant has been issued in the United Kingdom, or persons who are wanted by the United Kingdom police on suspicion of a serious crime;

(c) In very rare instances, persons whose past or proposed activities are so demonstrably undesirable that the grant or continued possession of passport facilities would be contrary to the public interest;

(d) United Kingdom nationals repatriated from abroad at public expense, until they have repaid the cost of repatriation.

178. These classes define the limits within which passports are refused, although in practice not everyone within them is denied passport facilities. Decisions under (c) above are always made personally by the Secretary of State. He may at his discretion withdraw British passport facilities which he has granted. The exercise of the discretion of the Secretary of State to

refuse or withdraw passports may be reviewed by the courts. The operation of these provisions rarely leads to the outright refusal of passport facilities. The procedure is as follows:

Category (a) (Minors). The applicant is advised of the existence of the court order and how to obtain the necessary consents. If these are not forthcoming, the application is generally withdrawn. When an application is made to a consular post overseas, an emergency passport would be provided to enable the child to travel to the United Kingdom;

Category (b) (Warrants of arrest). On receipt of a passport application in the United Kingdom, efforts are made to put the warrant into effect, and the application is held in abeyance. The passport would be issued on conclusion of the case. Overseas there have been very few cases, perhaps two or three in recent years, where full passport facilities have been refused. Again an emergency passport for return to the United Kingdom is offered in all cases;

Category (c) (Undesirable activities). About 25 persons have had their passports withdrawn since 1947 on the ground of overriding public interest, mainly in cases involving subversion or espionage;

Category (d) (Repatriation Debtors). Records show that 744 persons were repatriated at public expense in 1988. Their passports are impounded on arrival in the United Kingdom pending repayment of the cost of repatriation. If a further passport application is made before the debt is cleared, the procedure is similar to that under (a) and (b). On receipt of an application, the debtor is contacted and asked to repay the money, which he usually does. If repayment is impossible, and there is an urgent need to travel, a passport of limited validity will be issued. The Passport Office receives about one such application per month.

179. There is no power in United Kingdom legislation to prevent persons embarking from the United Kingdom. Immigration officers operating outward passport controls do, however, alert the police where there is reason to believe that a person is a ward of court and may not be removed from the court's jurisdiction without the court's authority. In such cases it would be for the police to decide what action, if any, to take.

180. Persons leaving the United Kingdom may be required to produce a valid passport or some other document satisfactorily establishing their identity and nationality or citizenship, and those who do not are warned of the risks of travelling overseas without proper documentation. Ultimately, however, a person who insisted on leaving could not be prevented from so doing.

Restriction orders: prevention of football hooliganism

181. The Government has decided that specific new powers are required to prevent the attendance of certain convicted football hooligans at designated football matches outside England and Wales. The proposed new provisions are contained in part II of the Football Spectators Bill before Parliament at the 1988/89 session.

182. Once the provisions are in force, it will be open to a court in England and Wales, after convicting a person for a defined "football-related offence", to impose a restriction order. The effect of the order will be to require him (or less probably her) to report to a police station in England and Wales when a designated football match is taking place elsewhere. Failure to report when required is to be a criminal offence. There is also provision to impose a restriction order following conviction outside England and Wales for an offence corresponding to a football-related offence. The court will not be able to impose a restriction order unless it is satisfied that this will help to prevent violence or disorder at or in connection with a designated football match. Orders will last for two years or, if the person is sentenced to immediate imprisonment, five years.

183. The Government considers that this restriction on foreign travel is justified by recent incidents of football hooliganism by people from England and Wales visiting other countries. The restriction does not, however, amount to a general prohibition on foreign travel by the persons concerned.

Article 13

Deportation

184. The United Kingdom covered this article fully in its first report. Since its second report, there have been two developments. The first development, brought about by section 5 of the Immigration Act 1988, is that persons facing deportation on the basis that they have breached their conditions of stay and have been in the country for less than seven years, now have a right of appeal on the ground that, on the facts of the case, there is in law no power to make the deportation order for the reasons stated in the notice of decision. They may no longer appeal on the basis that the discretion of the Secretary of State to make the deportation order, taking account of compassionate circumstances and other factors in the Immigration Rules, ought to have been exercised differently. (They may however appeal on the ground of entitlement to asylum.)

185. Before the Immigration Act 1988, the majority of appeals against deportation were argued on the ground that the discretion of the Secretary of State had been wrongly exercised. Through the use of the appeals system, some appellants were able to extend their time in the United Kingdom, whereas on the facts of the case deportation was clearly justified. Persons who have been in the United Kingdom for seven years or more retain the full right of appeal and the Home Secretary has made certain additional exemptions, including cases where a claim for asylum has been refused.

186. The Government accepts that, where a person has been in the country long enough to establish real ties, it is right to allow these ties to be properly reviewed before a decision to deport is confirmed. The Government does not, however, accept that the same rights shall be available to those who have been in the country for only a relatively brief period. The qualification on the right of appeal for those who have been in the country for less than seven years does not apply to those being deported on the ground that their deportation is conducive to the public good (see sect. 3 (5) (b) of the Immigration Act 1971). They retain their full rights of appeal to the Immigration Appeal Tribunal.

187. However long those affected by this restriction have been in the United Kingdom, the Secretary of State is still required under the Immigration Rules to consider in every case all relevant factors, including compassionate circumstances, before deciding on deportation. It is still also the position that, under the Immigration Act 1971, a deportation order may not be made against a person while an appeal is pending, or while an appeal may still be brought against the decision to make a deportation order. This applies whether the appeal is to a higher court or to the independent appellate authorities, where administrative powers are being used. Furthermore, a deportation order may not be enforced against a person who has appealed against the destination to which he is to be deported until that appeal has been determined.

188. The number of persons removed under the deportation powers in the years 1986 to 1988 is set out in the table below, which illustrates the increased use of supervised departure and the increased effectiveness of procedural changes introduced in August 1988. Supervised departure as an alternative to deportation has always been available under the 1971 Act, and was used to remove persons liable to deportation provided that there was no overriding reason to make a deportation order to ensure that the person did not return to the United Kingdom. The procedures can be invoked only if the individual is willing to return to his own country, and he can benefit from the arrangements because he does not need to remain in detention while a deportation order is obtained. There are also administrative benefits in that the procedure does not involve obtaining a deportation order from the Home Secretary and, of course, relieves the pressure on detention accommodation. Its use was restricted, however, because the financial authority to meet the cost of supervised departure was limited to court recommendation cases; in other cases the individual had to meet the cost of his supervised departure.

Removal under deportation powers

	1986	1987	1988
Deportation orders enforced	738	776	745
Departures under supervision	80	147	643
	818	923	1 388

189. In order to implement the provisions of the 1988 Act to best effect, the Home Secretary also agreed that, although the Deportation Section of the Home Office should continue to retain overall responsibility for deportation work, responsibility should be delegated also to the Immigration Service to issue notices of intention to deport in cases where persons in breach of their conditions were traced in the field, to detain, to issue restriction orders where necessary and to authorize supervised departure if the potential deportee chose not to exercise his appeal rights and was willing to leave the country. These powers may be exercised at not less than inspector level in the Immigration Service.

190. The safeguard for all potential deportees is the right to appeal and, if this right is exercised, the case is referred to the Deportation Section, which takes over the handling of all aspects of the case in the normal way. Staff in the Deportation Section and the Immigration Service have the same instructions and guidance for dealing with deportation cases and there are frequent discussions between the organizations to ensure consistency. If it is necessary to make a deportation order, the submission is prepared by the Deportation Section and submitted, via the Minister of State responsible for immigration, to the Home Secretary for his personal consideration.

191. The lawfulness of the Home Secretary's decision to delegate certain of his deportation powers to members of the Immigration Service has been endorsed by the Immigration Appeal Tribunal, but is now the subject of a further challenge on judicial review.

192. The Second development is that responsibility for the independent appellate authorities passed from the Home Office to the Lord Chancellor's Department in 1987, which further emphasized their independence.

Illegal entry

193. Where directions are given for a person's removal as an illegal entrant, the Immigration Act 1971 provides that that person may appeal on the facts of the case, but only from outside the United Kingdom, except in certain limited circumstances (see para. 194 below). An illegal entrant is, by definition, a person to whom an immigration officer would have been bound to refuse entry had the full facts been known at the time entry was obtained, and it is therefore right that his right of appeal should be on a par with that for persons who have been refused leave to enter the United Kingdom. Illegal entrants may, however, seek judicial review of an immigration officer's decision to treat them as such.

194. Where a person is an illegal entrant by virtue of entering in breach of a deportation order, he or she may appeal while they remain in the United Kingdom on the ground that they are not the person named in that order.

195. In considering whether an illegal entrant should be removed, immigration officers take all relevant factors, including compassionate circumstances, into account before reaching a decision. The number of persons removed under illegal entry powers in 1988 results from the procedural changes set out in paragraph 189 above, which allowed a greater number of illegal entrants, including overstayers and others in breach of their conditions of entry, to be dealt with.

Removal under illegal entry powers

	1986	1987	1988
Number of illegal entrants removed or who left the United Kingdom voluntarily	1 142	1 566	2 196

Asylum

196. The United Kingdom fully meets its obligations under the 1951 United Nations Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees and gives asylum to those with a well-founded fear of persecution. The number of applicants has increased fivefold in the last 10 years, although the proportion of successful applicants decreased from 60 per cent in 1981 to 25 per cent in 1988. This is not because criteria are now more stringent, but because increasing numbers of refugees are not fleeing political persecution, but are in reality economic migrants with a (perfectly understandable) desire to improve their conditions. It would however be unfair to allow economic migrants to settle as though they were refugees and it would cause delay and frustration to genuine refugees and to the majority of immigrants who follow the normal procedures (50,000 in 1988).

197. There is no full right of appeal exercisable while in the United Kingdom for those who seek asylum at the port of entry. There is no such right for the majority of passengers refused leave to enter on other grounds, and to single out asylum seekers for special treatment would encourage applications for asylum. The lessons from other countries, particularly in Europe, which have such a system, is that delays soon run into years as appeals go from lower to higher courts. While waiting for a hearing, asylum-seekers establish themselves and start families and, if they fear they will not be successful, cannot be traced. This again is inequitable both to genuine political refugees and to normal immigrants.

Extradition

198. The United Kingdom has to engage in two types of extradition, foreign and Commonwealth. In addition, a simplified form of extradition, the backing of warrants procedure, operates between the Republic of Ireland and Scotland, Northern Ireland, and England and Wales. Each type is subject to legislation: the Extradition Act 1870, the Fugitive Offenders Act 1967 and the Backing of Warrants (Republic of Ireland) Act 1965. The 1870 and 1867 Acts have now been consolidated in the Extradition Act 1989. Avenues of appeal are set out in the extradition legislation, and in foreign and Commonwealth cases there is also a discretion available to the Home Secretary to refuse to surrender a fugitive. Additionally, it is a long-standing principle enshrined in United Kingdom legislation that persons should not be extradited if they are accused or convicted of crimes of a political character. It is also illegal for deportation powers to be used as a form of disguised extradition.

199. Extradition law also embodies the principle that fugitives should be surrendered only for acts which are offences not only against the law of the requesting State but which, if committed within the jurisdiction of the requested State, would also constitute offences against its own law. In addition, the offence for which the fugitive is sought must be extraditable under the law of both States. It is a generally accepted feature of extradition practice that the requesting State should specify the crimes for which the fugitive is sought and that the requested States should exercise some control over the prosecution of the surrendered fugitive for other crimes committed before his surrender.

200. A foreigner would not be extradited to a country where he or she might be in danger of persecution or torture. The Home Secretary has unfettered discretion not to surrender a fugitive if he considers that the standard of justice that the fugitive might receive in the requesting country is not adequate.

201. The Extradition Act 1989 has recently introduced important reforms in extradition law. As a means of simplifying and expediting extradition proceedings against serious international criminals, the Act provides for the United Kingdom to enter into extradition arrangements which do not require the requesting State to establish in United Kingdom courts that there is a prima facie case against the fugitive, and defining an extradition crime as any offence punishable with 12 months' imprisonment or more (provided the conduct of which the fugitive is accused would also be an offence so punishable in the United Kingdom). The existing safeguards mentioned above are however preserved or enhanced. For example, specific provision is made for a fugitive to submit representations against the Home Secretary's decision to surrender and to seek judicial review of such a decision.

Exclusion

202. If the Secretary of State is satisfied that a person is or has been concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland, or is attempting or may attempt to enter Great Britain, Northern Ireland or the United Kingdom for such a purpose, he may make an order under the Prevention of Terrorism (Temporary Provisions) Act 1989 excluding him from Great Britain, Northern Ireland or the United Kingdom. The Act also provides powers to effect the removal of an excluded person. A British citizen cannot be excluded from the United Kingdom nor can he be excluded from Great Britain or Northern Ireland if he is ordinarily resident there and has been so throughout the last three years. If a person, within the time-limits laid down, objects to an exclusion order being made against him, the Secretary of State has to refer the matter to a special adviser. Where the person asks to be interviewed by the adviser, this is done unless he has, with his consent, already been removed, in which case an interview is arranged where it is practicable to do so. The adviser writes a report for the Secretary of State.

203. The decision of the Secretary of State on reconsidering the case is final, but only very rarely has the recommendation of an adviser not been accepted. An exclusion order lasts for three years but may be revoked at any time. A new order can be made against a person whose exclusion order has been revoked or expired.

204. The Secretary of State personally considers all applications made by the police for exclusion from Great Britain, Northern Ireland or the United Kingdom and applies strict tests. An exclusion order is made only if there is a clear indication that the person concerned is actively involved in terrorism, or has been so, in most cases within the previous three years. The power is rarely used: on 30 June 1989, 127 orders were in force excluding persons from Great Britain, Northern Ireland or the United Kingdom.

Article 14

Time-limits

205. The United Kingdom wishes to add the following information about the right to be tried in England and Wales without undue delay (art. 14, para. 3 (c)). Section 22 of the Prosecution of Offenders Act 1985 gave the power to make regulations in England and Wales limiting the maximum time allowed to the prosecution to complete a stage on proceedings (overall limit) and limiting the period during which an accused might be held in custody awaiting completion of a stage in proceedings (custody limits). Ministers decided to introduce custody limits first, because of the overwhelming need to reduce the delays for defendants held in custody.

206. Following the successful completion of field trials in 1985-1986, statutory limits were introduced in four counties on 1 April 1987. The limits were 56 days from first appearance to summary trial or 70 days to committal in the magistrates court; and 112 days from committal to arraignment in the Crown Court. (Exceptionally, a longer limit to committal was set for the West Midlands because of particular problems in the Birmingham area, but this is being progressively reduced.) The introduction of statutory limits appeared to be successful and Ministers decided that uniform custody limits should be introduced nationally, but should be phased in in three stages so as to minimize the pressure on the criminal justice system. The burden of implementing custody limits falls on the Crown Prosecution Service (CPS), and the impact on the resources of the CPS was an important consideration.

207. On 1 April 1988, custody limits were extended to Wales and to nine English counties including Greater Manchester. On 1 June 1989, limits were extended to a further 23 counties including North, South and West Yorkshire. Only London and eight counties in the South-East are now outside the limits, and discussion on the phasing-in of limits to these remaining areas are taking place with the CPS and the police with a view to completion in 1990.

208. The results of monitoring so far suggest that under 5 per cent of cases are currently exceeding the limits. Reductions in waiting time have occurred, and the continuing progress in the West Midlands shows that significant improvements are possible. It is probably true that at the moment time-limits directly affect only a small number of cases. Indirectly, however, they have created a disciplined framework and established the presumption that delays will not be tolerated.

209. In Scotland, under the provisions contained in section 101 (2) of the Criminal Procedure (Scotland) Act 1975 as amended by section 14 (1) of the Criminal Justice (Scotland) Act 1980, an accused person cannot be detained in custody for more than 80 days on a warrant committing him for trial without being served with an indictment. Failure to serve an indictment within that period will result in his release from custody. An accused person must be brought to trial by the time he has spent 110 days in custody; if not, he must be liberated and, once liberated, cannot be tried for the offence concerned. An extension of the 80-day or 110-day ruling may be granted by a High Court judge provided there is a reasonable excuse for the delay, e.g. illness of the accused or of the judge or any other sufficient cause which is not attributable to any fault on the part of the prosecution. Either party has

the right to appeal against the judge's decision to the High Court. The 80-day and 110-day periods begin from the day of committal to custody and not from the day of arrest or first appearance in court, and apply only when the accused is held in custody on a committal warrant.

210. Under the provision laid down in section 331A of the Criminal Procedure (Scotland) Act 1975, as amended by section 14 (2) of the Criminal Justice (Scotland) Act 1980, the trial of an accused person must begin not later than 40 days from the bringing of the complaint (summons) in court. This time-limit may be extended in the circumstances given above in relation to solemn procedure, but the applications for such an extension should be made to the sheriff and not to the High Court. Again, if this time-limit is exceeded, the accused must be liberated and may not, thereafter, be tried for the offence concerned. When bail has been granted in a case to be dealt with under solemn proceedings, the trial must begin within 12 months of the accused person's first appearance in court. In summary cases involving statutory offences, when bail is granted, the general rule is that the trial should commence within six months of the commission of the offence, although some statutes provide for a longer period from the offence to the commencement of the trial. In cases involving offences under the common law, there is no time-limit within which the trial of the accused must take place. Again, in both solemn cases and in summary cases involving statutory offences, if the accused person is not brought to trial at the end of these time-limits, then that person may not be tried for the offence concerned.

211. The Northern Ireland (Emergency Provisions) Act 1987 enabled the Secretary of State for Northern Ireland to make regulations to set time-limits in relation to preliminary proceedings for terrorist-related offences, in view of the concern at the length of time during which terrorist suspects were being held on remand before trial. This power has not so far been exercised; but a number of administrative measures have been taken within the criminal justice system in order to eliminate avoidable delays. For those in custody at the time of trial charged with scheduled offences, the average period from remand to committal fell from 27 weeks in 1985 to 24 weeks in 1988, and from committal to arraignment from 16 weeks to 9 weeks.

Compensation for wrongful conviction

212. Since the second report, the United Kingdom has introduced legislation to incorporate on a statutory basis the provisions of article 14, paragraph 6, of the Covenant. Under section 133 of the Criminal Justice Act 1988, a person convicted of a criminal offence which has been quashed by the Court of Appeal, under application made outside the normal time-limits or following action by the Secretary of State to refer the matter to the Court of Appeal or in respect of which a pardon has been granted, has a right to apply for payment of compensation. If the person concerned has died, his or her personal representative may submit an application.

213. The final decision on whether compensation under the section is due rests with the Secretary of State (subject to review by the courts), who will consider whether the overturning of the conviction was due to a new or newly discovered fact showing beyond reasonable doubt that there had been a miscarriage of justice, and whether the non-disclosure of the fact was not attributable to the person concerned. If the Secretary of State considers

that payment is due under the section, the amount will be determined by an independent assessor. The Secretary of State has undertaken to pay whatever sum the assessor recommends. Reasonable legal costs incurred by the applicant will be met.

Right of silence

214. In Northern Ireland, the Criminal Evidence (Northern Ireland) Order 1988 enables courts to draw whatever inferences would be proper from the fact that an accused remained silent in four situations:

(a) The "ambush" defence, where having remained silent during police questioning the accused offers an explanation of his conduct for the first time at his trial when he might reasonably have been expected to offer it when being questioned;

(b) Where the prosecution has established that there is a case to answer, and the accused is warned that he will be called to give evidence and that if he should refuse to do so the court may draw such inferences as would appear proper;

(c) Where the accused fails or refuses to explain to the police certain specified facts such as substances or marks on his clothing;

(d) Where an accused fails or refuses to account to the police for his presence at a particular place.

215. The measures do not remove an accused person's right of silence, and remaining silent will not be an offence. Provisions similar to (c) and (d) above exist in Scotland under section 6 of the Criminal Justice (Scotland) Act 1980.

216. The Government is now considering what amendments should be made to the right of silence in England and Wales. The intention is again not to abolish this right, but to amend it in such a way that defendants cannot obtain an advantage by relying for their defence on a fact that they failed, without good reason, to disclose to the police. The Government has acknowleged that this is a difficult area and has not as yet proposed a solution.

217. A related question is whether comment should be made on and inference drawn from an accused person's failure to testify in court. A Working Group appointed by the Home Secretary to consider these issues produced a report with recommendations in May 1989. The Group suggested that, subject to certain safeguards, a jury or magistrates' court should be able to draw whatever inferences were reasonable from the failure of the accused, when being interviewed or upon being charged, to mention a fact upon which he later relied for his defence. The Group did not feel, however, that failure to answer questions or to mention such a fact should in the present state of the law, be capable of amounting to corroboration or otherwise constitute positive evidence of guilt. On the question of advance disclosure of the defence case, the Group recommended that there should be no requirement for this in magistrates courts, but that it should be introduced progressively in the Crown Court in respect of cases where there was a risk of an "ambush" defence. The Group also recommended that, in the Crown Court, the prosecution should be able to comment upon the defendant's failure to give evidence or to

answer questions at his trial in similar terms to those in which judges might already do so, and that judges should make more frequent and robust use of their existing right to comment. Magistrates should direct themselves as to the significance of the defendant's failure to give evidence. These recommendations are still being considered.

Challenges to jurors

218. Defendants in criminal trials have the right to seek to remove jurors by challenging them with cause and, until 5 January 1989, they had the right to challenge up to three jurors without cause and have them removed - the "peremptory challenge". But it became apparent that, in trials in England and Wales involving more than one defendant, peremptory challenges could be pooled to change the composition of the jury in an attempt to obtain a panel which was thought likely to be prejudiced in favour of the defence. The Government thought, and Parliament agreed, that this ran counter to the fundamental principle that juries should be selected at random. Peremptory challenge was therefore abolished in England and Wales by section 118 of the Criminal Justice Act 1988, with effect from 5 January 1989. The right to challenge with cause is not affected.

219. To ensure that the abolition of peremptory challenge does not leave the prosecution with an unfair advantage, the Attorney-General has issued guidelines on the exercise by the Crown of its corresponding right of "stand-by", whereby the prosecution can ask a juror to stand-by rather than join a particular jury. In future, it will be exercised in only two situations: first, to remove a manifestly unsuitable juror, but only if the defence agrees; secondly, in terorist or security cases, where a check carried out under the Attorney-General's authority has revealed that a particular juror might be a security risk.

References of apparently lenient sentences to the Court of Appeal

220. In response to public and political criticism in England and Wales of the sentences imposed in certain cases involving very serious offences, section 36 of the Criminal Justice Act 1988 gives power to the Attorney-General in England and Wales to refer as he thinks fit an apparently lenient sentence to the Court of Appeal, which would then have power to increase the sentence imposed. Leave of the Court of Appeal must be obtained. Notice of an application for leave to refer a case must be given within 28 days from the day on which the sentence was passed. One such case has so far been referred, resulting in an increase from three to six years in the prison sentence passed for incest with a 13 year-old girl. The Court of Appeal has also issued new sentencing guidelines for future cases involving offences of incest.

Interpretation of court proceedings

221. Proceedings are ordinarily conducted in English. In Wales and the former county of Monmouthshire, the Welsh Language Act 1967 provides that the Welsh language may be spoken by any party, witness or other person who desires to use it in legal proceedings, subject in the case of proceedings in a court other than a magistrates' court to such prior notice as may be required by rules of courts (section 1 (1)). Where a defendant cannot speak English, the evidence against him must be translated into his own language, although the judge may waive this requirement if the defendant or his counsel wishes to

dispense with a translation and the judge is satisfied that the defendant substantially understands the case against him. Where a witness testifies in a language other than English, his evidence must be translated by a sworn interpreter.

Power of Court of Appeal to order retrial

222. Section 43 of the Criminal Justice Act 1988 gives the Court of Appeal (Criminal Division) a wider power to order a retrial, which is similar to that already possessed by the equivalent courts in Scotland and Northern Ireland. It enables the Court of Appeal, when allowing an appeal against conviction, to order a retrial in any case where it appears to the Court that the interests of justice so require. Previously, the Court of Appeal could order a retrial only if new evidence had come to light.

223. The reason for the change is to avoid cases where a person convicted at the Crown Court has later been acquitted on appeal simply because of some technical defect in the original trial, such as a mistake in procedure or a misdirection to the jury. Although the Court of Appeal has the power to dismiss an appeal if it considers that no miscarriage of justice has occurred, the circumstances of some cases could, before the passing of section 43, be sufficiently unclear to lead to the conviction having to be quashed.

"In camera" trials

224. At common law, it is a fundamental principle that justice should be done in open court. A few exceptions follow:

(a) Section 36 of the Children and Young Persons Act 1933 and, in Scotland, section 165 of the Criminal Procedure (Scotland) Act 1975, provides that no children (other than infants in arms) shall be allowed in court during the trial of a person for an offence unless as witnesses (a child is a person under 14 years of age);

(b) Section 37 of the 1933 Act (section 166 of the 1975 Act) provides that, where a child (i.e. under 14 years of age) or young person (i.e. aged 14-17) is called as a witness in proceedings for an offence against decency or morality, the court shall be cleared except for members and officers of the court, parties to the case and their counsel and solicitors, and persons otherwise directly concerned with the case; but this provision expressly does not apply to journalists;

(c) Section 47 of the 1933 Act provides that no person shall be present at the proceedings of a juvenile court except members and officers of the court, parties to the case and their solicitors and counsel, witnesses and any other persons directly concerned in the case, bona fide representatives of newspapers or news agencies, and such other person as the court may especially authorize to be present;

(d) Section 8 (4) of the Official Secrets Act 1920 provides that, in proceedings under the Official Secrets Act, the court may, upon the application of the prosecution, order all or any portion of the public to be excluded on the ground that the publication of any evidence to be given would

be prejudicial to the national safety; but the passing of sentence is required to take place in public. These provisions apply to prosecutions under section 11 (4) of the Official Secrets Act 1989 (see paras. 256-257 below).

Section 159 of the Criminal Justice Act 1988 allows for appeal to the Court of Appeal against an order restricting the access of the public to a trial.

Determination of parents' rights of access to children

225. This matter will be dealt with under article 24.

Article 15

226. The United Kingdom refers back to its initial report, and would like to add the following information about the War Crimes Inquiry.

227. On 15 February 1988, the Home Secretary appointed an Inquiry relating to allegations that persons who were now British citizens or resident in the United Kingdom had committed war crimes during the Second World War, and asked it to consider whether the law of the United Kingdom should be amended to make it possible to prosecute them for war crimes. Current legislation does not give British courts jurisdiction over murder and manslaughter committed abroad by persons who were not British subjects at the time of the alleged offences. "War crimes" were defined for the purposes of the inquiry as crimes of murder, manslaughter or genocide committed in Germany and in territories occupied by German forces during the Second World War.

228. The principle of nulla poena sine lege is contained in paragraph 1 of article 15. Paragraph 2 of article 15, however, qualifies this principle by saying:

> "2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations."

229. The Inquiry concluded, therefore, that legislation to give British courts jurisdiction over murder and manslaughter violating the laws and customs of war in Germany or German-occupied territory during the war by those who were now British citizens or resident in the United Kingdom would not breach the principles in article 15. The Inquiry recommended that such legislation should be introduced. The Government is considering the Inquiry's report and will make a final decision on whether to introduce amending legislation after it has considered the views of Parliament. Debates are likely to be held in both Houses later this year.

Article 17

Prisoners

230. In England and Wales, Prison Standing Order 5, which sets out the rights and privileges of prisoners with regard to visits and correspondence, was revised and published with effect from April 1989. The new version of the standing order incorporates further guidance issued in 1987 and embodies additional safeguards for prisoners as against its 1981 predecessor (on which

see the second report, paras. 65-66), in particular abolition of the simultaneous ventilation rule and incorporation of procedures designed to guarantee the privacy of inmates' correspondence with their legal advisers. The Scottish and Northern Ireland standing orders are about to be revised and will incorporate similar amendments to those outlined above, although guidance on these matters has already been issued.

Interception

231. The Interception of Communications Act 1985, which came into force on 10 April 1986, created a new offence of unlawful interception; put on a statutory basis the procedure for obtaining interception warrants; and required that proper arrangements be made for safeguarding intercepted material, in particular to ensure that the disclosure of such material be kept to the minimum necessary for the purposes described in the Act. The Act provides a means of redress for members of the public who believe that their communications are being intercepted under a warrant: a tribunal with powers including the quashing of warrants and the ability to direct the Secretary of State to pay compensation. The Act also provides for an independent commissioner to review the working of the Act and to report annually to the Prime Minister; this report is to be laid before each House of Parliament and made available to the public.

232. Section 1 of the Act provides for penalties, on conviction on indictment, of imprisonment for a term not exceeding two years or an unlimited fine or both.

233. Under section 2 of the Act, the Secretary of State shall not issue a warrant unless he considers that it is necessary:

(a) In the interests of national security;

(b) For the purpose of preventing or detecting serious crime; or

(c) For the purpose of safeguarding the economic well-being of the United Kingdom. Sections 2-5 of the Act impose further conditions on how this power should be exercised. (These also govern considerations (a) and (b) above.)

234. The Interception Commissioner published, in the annex to his annual report for 1988, statistics on the number of warrants issued by the Home and Scottish Secretaries in each of the years 1985-1988. Both he and the Government consider that to publish figures for the Foreign and Northern Ireland Secretaries would be prejudicial to national security.

Security Service

235. The Security Service Act 1989 places the Security Service on a statutory basis. It identifies in law the functions of the Security Service and the safeguards under which it may obtain and disclose information. It provides for an independent commissioner and tribunal to investigate complaints and to order remedies.

236. Under the Act, the functions of the Security Service are confined to the protection of national security and to safeguarding the economic well-being of the United Kingdom from overseas threat. The Security Service may obtain only information which is necessary for the proper discharge of these functions and may disclose information only for these purposes or for the prevention or detection of serious crime. The Secretary of State is required to approve arrangements relating to the disclosure of information by the Security Service which may affect a person's employment. The warrant decisions of the Secretary of State are subject to continuing independent review by a judicial commissioner, who will produce an annual report to be laid before Parliament.

237. A tribunal of three to five lawyers is to be appointed under the Act to receive complaints from individuals or organizations aggrieved by anything they believe the Security Service has done in relation to them or their property. If a determination is made in the complainant's favour, the tribunal could order that any inquiries about the complainant cease, records be destroyed, warrants quashed and financial compensation paid.

Data protection

238. With reference to paragraph 67 of the second report, the Data Protection Act 1984, which introduced measures designed to safeguard data processed automatically, became fully effective on 1 November 1987, and as a result the United Kingdom was able on 1 December 1987 to ratify the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. Paragraphs 68 and 69 of the second report continue to apply, and express the present position.

239. The Act gives anyone about whom personal data are held on computer ("data subjects") the right to a copy of that information. Those who keep such data ("data users") are, with some exceptions, required to register and provide an address to which the data subject can write. The Act covers information collected by private bodies as well as by the State, with some exceptions for purposes such as national security or the prevention of crime. The Act requires that the data subject shall be made aware of the uses to which the data are put, and be given the opportunity to request that his data are not passed to other data users.

240. Transborder flow of personal data is covered by the 1981 Convention. The Convention sets minimum standards, and if a State Party observes them another State Party cannot prevent relevant data from crossing its frontiers. But the 1984 Act gives powers to intervene if necessary in cases where the Convention is inapplicable.

Search warrants

241. Search warrants are normally issued in England and Wales by justices of the peace under section 8 of the Police and Criminal Evidence Act 1984. In certain circumstances, however, broadly where sensitive or legally privileged information is sought or may be found, the authority of a county or High Court judge is necessary for premises or property to be searched. The only qualification to the requirement that a warrant be obtained from a justice or a judge is that a constable may enter and search premises without a warrant in order to arrest a person for an arrestable offence, or to recapture a person who is unlawfully at large, or to save life or limb, or to prevent serious

damage to property. He may also enter and search any premises occupied or controlled by a person who is already under arrest for an arrestable offence in order to obtain evidence. In general, and the Government regards this as important, the police and public officials proceed by consent wherever possible, thus avoiding the need for privacy to be forcibly invaded.

Evidence in court obtained by infringing privacy

242. In English common law, evidence is admissible if it is relevant to the issue, and the court is not concerned with the way it was obtained. Case law shows that evidence may be admissible even though it has been stolen, or obtained by illegal search, eavesdropping, private telephone tapping, secret tape recording or interception of an unposted letter. This is because, despite the circumstances in which it was obtained, its relevance to the issue to be determined by the court may be such that, were it to be excluded for that reason, justice would not be done. However, by virtue of section 78 of the Police and Criminal Evidence Act 1984, a court can refuse to allow evidence which would have an adverse effect on the fairness of the proceedings. The section makes explicit reference to the circumstances in which the evidence was obtained. Also, under the Police and Criminal Evidence Act 1984, the court may not allow a confession to be given in evidence if it is claimed that it was made under oppression or in other circumstances that might render it unreliable, and the prosecution cannot prove that it was not made in such circumstances.

Women's taxation

243. The 1988 Finance Act enacted a system of independent taxation for husbands and wives, to take effect from April 1990. It will ensure that married women's right to privacy is respected as regard their tax affairs. From April 1990, husbands and wives will each receive their own tax allowances and be responsible for handling their own tax affairs (see paras. 287-288 below).

Article 18

244. The Committee previously expressed concern that racial minorities were encountering difficulties when they wished to practise their religion. The United Kingdom representatives accepted that there might be isolated cases of this kind but, as previous reports have indicated, and in accordance with article 18, the Government considers that no unnecessary obstacle should be placed in the way of persons wishing to practise their religion. Difficulties can be caused where Muslim employees have not found it easy to reconcile their religious needs with the requirements of their employers, but experience has shown that employers have adopted a combination of flexible working hours with annual leave entitlements to cater for Muslim needs; it appears that most Muslim employees find these arrangements satisfactory.

245. On 14 July 1989, the Government announced that a new clause would be added to the Employment Bill currently before Parliament which would exempt turban-wearing Sikhs from proposed regulations to be made under the Health and Safety at Work, etc. Act. 1974, requiring construction workers to wear head protection. This proposed exemption is being made in recognition of the fact that many Sikhs (some 40,000 of whom work in the industry) would otherwise feel compelled to choose between their religion and their job. There will be a parallel exemption for employers from civil liability in such cases.

246. Under the Education Act 1980, a voluntary body of any religious persuasion which wishes to establish a new voluntary-aided school in England and Wales, whether or not the school already exists as an independent school, must seek the approval of the Secretary of State for Education and Science. Any such proposal must be discussed in the local education authority before it is published and submitted to the Department of Education and Science for consideration.

247. The Secretary of State considers all such proposals on their individual merits, taking into account a number of factors. He considers whether there is an overall need for extra maintained school places in the area, whether the proposed site and premises are satisfactory, whether they can meet the expenses which fall to them, and whether the teachers are suitably qualified. He will also need to be satisfied that the school will be able to deliver the national curriculum (this is provided for by the Education Reform Act 1988 and establishes three core subjects, namely, English, mathematics and science, and seven other foundation subjects, namely, history, geography, design and technology, art, music, physical education and, in secondary schools, a modern foreign language) and will provide equal educational opportunities for boys and girls. The same criteria are applied to all types of school, regardless of religious denomination.

Religious education in schools

248. The Education Reform Act 1988 (ERA) re-enacted the requirement that all maintained schools in England and Wales must provide religious education (RE) and daily collective worship for all pupils registered at the school. Parents have the right to withdraw their children wholly or partly from any RE and/or worship provided. The nature of the RE and worship to be provided depends upon whether the school is denominational or non-denominational. It is sometimes possible for alternative kinds of RE and worship to be provided on school premises. Where parents desire their children to receive RE of a kind not provided at the school, children may be withdrawn from the school to receive such RE elsewhere.

249. The Act introduced new requirements in respect of the nature of the collective worship to be provided at non-denominational ("county") schools. From September 1989, worship at these schools must be "wholly or mainly of a broadly Christian character". But where this requirement seems inappropriate for all or some pupils at a school, a local standing advisory council on religious education has the power to lift it, and allow schools to provide alternative worship.

250. The Act also requires that any new locally agreed syllabus for RE, which governs the RE provided in most schools, must "reflect the fact that the religious traditions in Great Britain are in the main Christian, whilst taking account of the teaching and practices of the other principal religions represented in Great Britain".

251. The requirements in Scotland and Northern Ireland are broadly similar, while reflecting the different local circumstances. Religious education and collective worship must be provided for all pupils, except those withdrawn by their parents. In neither country are there any requirements on the content of collective worship, except that in controlled (State) schools in

Northern Ireland the collective worship required must not be distinctive of any particular denomination. Reforms to be introduced in Northern Ireland later in the year will empower the Northern Ireland Education Department to specify a core syllabus for religious education.

Article 19

Open government

252. Since the second periodic report, there has been an increase in the amount of information for which access is provided in law, and an increase in the amount of official information made available. The Data Protection Act 1984, which was mentioned in paragraphs 238-240 above, gives individuals right of access to information held about them on computers; the Local Government (Access to Information) Act 1985 gives right of access to local authority meetings and to certain documents and records, and regulations under the Access to Personal Files Act 1987, which came into force on 1 April 1989, give individuals a right of access to manual records with information about themselves held by local authorities for the purposes of housing and social services.

253. Over the last 10 years, much more government information has been made available; there is more briefing of news media, an increase in published research papers and evaluation of the effect of policies, and more openness in the processes of government. There has also been a substantial increase in public consultation.

254. The Government is opposed to a general statutory right of access to information on the internal workings of government and considers that such a right would be inappropriate, because ministerial accountability to Parliament would be undermined by appeals on release of information to the courts or some form of information commissioner, and unnecessary, because a wide range of information is already available, particularly through the mechanism provided by Parliamentary Select Committees. Much of the business of government is necessarily confidential and, as the Prime Minister said in Parliament in October 1985, there is no reason to believe that a Freedom of Information Act would give a better result in terms of accountability of the Government to Parliament and the electorate.

255. There is another category of information which is not normally released: information whose release would not be in the interests of national security.

Official secrets

256. The Official Secrets Act 1989 abolishes the much criticized blanket protection for official information provided by section 2 of the Official Secrets Act 1911. It also abolishes the offence under that Act of receiving official information unlawfully disclosed.

257. The purpose of the 1989 Act is to limit the protection of official information to those areas for which criminal sanctions are absolutely necessary, that is, security and intelligence, defence, international relations, foreign confidences, crime and special investigation powers. In

almost all circumstances, unauthorized disclosure is an offence only if a specific test of harm is met and the person concerned knew that it would be harmful. It is for the jury alone to decide whether a particular disclosure meets the relevant harm test and to determine all other matters under the Act.

Blasphemy

258. The old criminal law on blasphemy has seldom been used; the last public prosecution in England and Wales was in 1921 and the last private one in 1977. Blasphemy and its written form, blasphemous libel, are common law offences; that is, their scope and definition are the result of successive judgements in the courts. The courts have held them to consist of using language which is scurrilous, abusive or offensive and which tends to vilify God, Jesus Christ, the Bible, or the formularies of the Church of England. Following the most recent prosecution for blasphemous libel - the "Gay News" trial in 1977 - the Law Commission for England and Wales examined the common law offences of blasphemy and blasphemous libel. In its 1985 report on offences against religion and public worship it concluded, by a majority of its members, that these offences should be abolished and not replaced. A minority proposed a new statutory offence applying to all religions, and were supported in this view in a 1988 report commissioned by the Archbishop of Canterbury to consider the Law Commission's report.

259. The publication of the book The Satanic Verses has given rise to calls on the one hand for the law on blasphemy to be extended to protect Islam and other religions and on the other for it to be abolished altogether. These are plainly incompatible positions which allow of no compromise. The United Kingdom recognizes that this is a difficult area where there are strongly held views on both sides, but the Government has no plans at present for legislation. There have also been calls on the Government to suppress the book. Ministers have made it clear in reply that they have no powers to suppress or ban publications and that the right to freedom of expression is qualified only by the relevant provisions of the criminal law.

Obscenity

260. Under the Obscene Publications Act 1959, an article is deemed to be obscene if its effect is such as to tend to deprave and corrupt persons who are likely to read, see or hear the matter which it contains. The Government takes the view that this test of what is obscene does not afford adequate protection to the public against the worst type of material in circulation, and supported attempts in 1986 and 1987 by private Members in the House of Commons to strengthen the test of obscenity. Both attempts were controversial and failed. Parliament, however, legislated in the Criminal Justice Act 1988 to make the simple possession of an indecent photograph of a person under the age of 16 a criminal offence. To take, distribute or show such photographs, or possess them with a view to distributing or showing them, was already an offence under the Protection of Children Act 1978. Positive action taken by the Government in respect of broadcasting standards and classification of video recordings is set out in paragraphs 262, 263 and 270 below.

Sedition

261. Sedition is a common law offence which is concerned with written or spoken attempts to vilify or degrade the sovereign, the creation of discontent or disaffection, incitement of the people to tumult, violence and disorder, the bringing into contempt of the Government, laws or constitution, and effecting legislative change by the recommendation of physical force. The offence is not a restriction on freedom of speech as it bites only where the language used exceeds the bounds of fair and temperate argument or discussion. Case law suggests that an intention to cause violence must also be proved. The Government believes that the offence may in any case have fallen into disuse.

Broadcasting

262. The Cable and Broadcasting Act 1984 established a new body, the Cable Authority, to license new cable programme services and to ensure, so far as possible, that cable programmes complied with specific requirements in such matters as taste and decency. The obligations are broadly the same as those which already applied to BBC and Independent Broadcasting Association (IBA) programmes. The jurisdiction of the Broadcasting Complaints Commission extends to complaints about cable programmes.

263. In May 1988, the Home Secretary announced the setting up of the Broadcasting Standards Council to act as a focus for public concern about the portrayal of sex and violence in all forms of broadcasting. The Council's five main tasks were to prepare a code of practice on the portrayal of sex and violence and matters of taste and decency; to monitor programmes having regard to these matters; to receive and examine complaints on them and to publicize the findings; to undertake research on these matters; and to publish an annual report on its activities. The opportunity will be taken in future broadcasting legislation to place the Council on a statutory basis and to bring broadcasting within the scope of the Obscene Publications Act 1959.

264. A government White Paper, "Broadcasting in the '90s, competition, choice and quality", was published on 7 November 1988. Responses have now been considered. The proposals in the White Paper will form the basis for legislation to overhaul the present broadcasting regulatory régime. The IBA and the Cable Authority will be replaced by an Independent Television Commission (ITC) and a Radio Authority. The ITC will allocate by competitive tender licences for independent television at the national, regional and local level, including direct broadcasting by satellite. It will exercise lighter control than the IBA and Cable Authority but will still have substantial powers to enforce licence conditions. The Radio Authority will operate on broadly similar lines. The regulatory functions of the BBC and the Welsh Fourth Channel will remain largely unchanged.

265. On 19 October 1988, under powers given to him through the Broadcasting Act 1981 and the BBC's Royal Charter and Licence, the Home Secretary issued directions to the BBC and IBA to refrain from broadcasting statements by representatives of Northern Ireland terrorist organizations and their supporters. The restrictions affected only the broadcasting of direct statements by those concerned. They did not restrict the second-hand reporting of events. The terrorists' activities and the words they uttered could still be reported, just as they were in the written press. The

Government took this decision because of the offence caused to the public by such statements, because of the publicity and spurious respectability which such appearances gave to the supporters of terrorism and because they used these opportunities to threaten and intimidate law-abiding citizens. Both Houses of Parliament approved the Government's decision. This decision was unsuccessfully challenged on application for judicial review heard on 26 May 1989 in the case of R v Secretary of State for the Home Department, ex parte Brind and Others. An appeal before the Court of Appeal is pending.

The press

266. An important element in the protection of human rights in the United Kingdom is the long tradition of press freedom. There is no statutory control over the press, which operates under a system of self-regulation supervised by the Press Council, which is independent of government. During the course of 1989, two Private Members' bills attempted to introduce statutory control over the press in connection with the right of reply and the protection of privacy. Because of their implications for the freedom of the press, the Government did not support these bills and they did not complete their parliamentary passage.

267. The press has, in general, the same freedom as the individual to impart ideas and information. No specific laws govern the press, although the law on, for example, contempt of court, official secrets, libel and defamation restricts what the press may report. On the subject of judicial proceedings, the press may not publish material likely to prejudice the courts' reputation for fairness before or during proceedings, nor may it publish before or during a trial matter which might tend to influence the result.

268. At present, it is the Government's view that self-regulation by the press is preferable to any form of statutory control, but, in response to public and parliamentary disquiet about some activities of some sections of the press, particularly in intruding into citizens' privacy, the Government has set up an independent committee to review the question of privacy and related matters.

269. The Press Council, which considers complaints against newspaper reporting, has no statutory powers of enforcement; it is a voluntary body comprising 37 full members, of whom 18 are drawn from professional bodies (mainly the newspaper industry itself), and 19, including the chairman, are lay members.

Films

270. Under the Cinemas Act 1985 (which consolidated earlier legislation), a licence from the appropriate local authority is required for premises used for a film exhibition. Local authorities have the power to prevent films being shown in licensed cinemas in their area, to impose restrictions on who may see them, or to require cuts. In general, they rely on the recommendations of the British Board of Film Classification, which is a body independent of government. Ministers have no powers to influence the Board's classification decisions. Under the Video Recordings Act 1984, with certain exceptions, pre-recorded video cassettes must be classified by the British Board of Film Classification before they may be supplied to the public.

Article 20

Incitement to racial hatred

271. Since the second report, the law on incitement to racial hatred in Great Britain has been strengthened by the implementation of sections 18 and 19 of part III of the Public Order Act 1986 of 1 April 1987 (replacing section 5A of the Public Order Act 1936 and section 70 of the Race Relations Act 1976). A person using threatening, abusive or insulting words or behaviour or displaying, publishing or distributing such material is guilty of an offence not only where racial hatred is likely to be stirred up but also where the person intends to stir up racial hatred. Part III also extends the law to cover broadcasting (except by the BBC and IBA, which work under separate obligations as to programme standards), cable and other media which involve recordings of visual images or sounds. A new offence of possession of racially inflammatory material has also been created; the police have been given new powers of search in relation to such material and the courts can order its forfeiture. A similar provision is to be found in Northern Ireland in part III of the Public Order (Northern Ireland) Order 1987, which also covers incitement to religious hatred. The Government does not at present see any need to go beyond this, for example by introducing any legislation in Great Britain on incitement to religious hatred, which it does not regard as an issue on the mainland.

272. The Committee has in the past criticized the existence in the United Kingdom of neo-fascist organizations. While the Government does not approve of the views of such organizations, they do not have a significant influence on the life of the country or represent a threat which cannot be dealt with by other means, and provided they act within the law the Government sees no need to introduce new legislation to proscribe them. Different considerations apply to organizations concerned in terrorism (see under art. 21 below).

273. In 1984, the Committee asked for information about the number of proceedings which had been instituted under section 5A of the Public Order Act 1936 since its introduction in 1976. As indicated above (para. 271), this section has now been repealed and replaced by part III of the Public Order Act 1986. Figures for prosecutions for incitement to racial hatred were not kept centrally before 1979; since then, there have been 44 prosecutions for incitement to racial hatred.

Article 21

274. While the views of some organizations may be regarded as offensive, the Government does not regard offensiveness as a suitable test for imposing bans on marches or conditions on public assemblies. It is too subjective and could lead to an unacceptable infringement of free speech. There are therefore no powers to ban meetings or assemblies on grounds of offensiveness and such a power would, in the Government's view, be unacceptable. Marches can therefore be banned only if serious public disorder is apprehended. Statutory conditions can be imposed on a public assembly or march only if one of four tests (serious disorder, serious damage, serious disruption, or coercion) is apprehended. The tests set a high threshold below which the imposition of conditions is not possible.

275. The imposition of conditions on a march or meeting, or the prohibition of a march, can be challenged in the courts by way of judicial review if they are thought to have been imposed unreasonably. Because conditions can, if necessary, be imposed by the senior police officer at the scene, situations might in principle occur where the judicial process could not take place between the imposition of conditions and the start of the event. However, the imposition of conditions a breach of which constitutes a criminal offence could be challenged in any such criminal proceedings. In practice, significant assemblies or processions are invariably discussed between the organizers and the police some time in advance (there is a statutory duty to give notice of certain public processions to the police), and the Government knows of no circumstances where conditions have been imposed at the last moment.

276. Section 1 of the Prevention of Terrorism (Temporary Provisions) Act 1989 (which replaced similar provisions in the 1974, 1976 and 1984 Acts of the same title) does however enable the Secretary of State to proscribe in Great Britain any organization that appears to him to be concerned in terrorism occurring in the United Kingdom connected with Northern Irish affairs, or in promoting or encouraging it. The Irish Republican Army (both provisional and official wings) has been proscribed since 1974, and the Irish National Liberation Army since 1979. No other organization has yet been proscribed in Great Britain. For the purposes of this legislation, terrorism is described as "the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear".

277. The power to proscribe in this legislation does not extend to Northern Ireland itself, where the power of proscription is conferred by section 21 of the Northern Ireland (Emergency Provisions) Act 1978 and section 9 of the Northern Ireland (Emergency Provisions) Act 1987. The power to proscribe is used only against organizations which are actively and primarily engaged in the commission of criminal terrorist acts. In Northern Ireland, the following organizations are proscribed: the Irish Republican Army, the Irish National Liberation Army, the Ulster Volunteer Force, the Ulster Freedom Fighters, Cumann na mBan, Fianna na hEireann, the Red Hand Commando and Saor Eire.

278. It is an offence under the 1978, 1987 and 1989 Acts to belong to a proscribed organization; to solicit support for or contribute to the resources of a proscribed organization; to arrange meetings in support of a proscribed organization; and to display support in public for a proscribed organization.

Article 22

Trade unions

279. On 31 December 1988, there were 354 listed trades unions. Listing is voluntary, and there may be more unions which are not listed. The main trades unions federations are the Trades Union Congress, the Council of Managerial and Professional Staffs, the Federation of Managerial, Professional and General Associations, the Council of Managerial, Professional and Allied Staffs, the Confederation of Shipbuilding and Engineering Unions and the General Federation of Trade Unions.

280. Total union membership was about 10,500,000 in December 1987. This represents about 36.6 per cent of the working population. At the time of the second periodic report, 39.3 per cent of the working population were members of unions.

281. The Government supports both the positive freedom to associate and the negative freedom not to associate. This can be seen from the statement in paragraph 2.23 of the White Paper, "Employment for the 1990s", published on 5 December 1988, that "the Government believe that people should be free to choose for themselves whether or not they belong to a trade union".

282. Since the submission of the second report, increased statutory protection has been introduced for employees who are not members of a trade union. The increased protection, which is described below, is contained in the Employment Act 1988.

Non-membership of a trade union

283. Section 11 of the Employment Act 1988 provides that dismissal of an employee for not being a member of a trade union is unfair in all circumstances. It also gives employees protection in all circumstances against action short of dismissal to compel them to be union members. If an employee considers that he has been dismissed, or has suffered action short of dismissal, in contravention of these rights he may complain to an industrial tribunal, which has the power to award substantial compensation or, where appropriate, order reinstatement. Legislation does not define what constitutes action short of dismissal, and it would be for an industrial tribunal to decide whether an employee had suffered such action. Action short of dismissal might, for example, cover discrimination in promotion, transfer or opportunities for training, or threats of dismissal or redundancy.

Trade union membership and activities

284. The Trades Union Congress (TUC) presented a complaint to the International Labour Organisation (ILO) in February 1984 (case No. 1261) that the United Kingdom had violated articles 2, 3, 4 and 5 of the ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), by denying staff employed at the Government Communication Headquarters (GCHQ) the right to belong to a trade union.

285. The Committee on Freedom of Association found that the action taken by the Government was not in conformity with Convention No. 87. However, the Government contends that Convention No. 87 cannot be viewed in isolation from Convention No. 151, which provides (in article 1.2) that the scope of the Convention's application to staff whose duties are of a highly confidential nature shall be decided by national laws and regulations. The ILO Committee of Experts has acknowledged that complex legal issues are involved in the interrelation of the conventions. The Court of Appeal in the United Kingdom has taken the view that article 1.2 of Convention No. 151 takes precedence over Convention No. 87. Accordingly, the Government does not consider that its actions at GCHQ represent a breach of its obligations under Convention No. 87.

286. In January 1987, the European Commission of Human Rights heard an application introduced by the Council of Civil Service Unions and Others against the United Kingdom (application No. 11603/85). The applicants' complaint was (inter alia) that the United Kingdom Government had removed the right of individual employees at GCHQ to belong to a trade union and that this action was not necessary in a democratic society in the interests of national security within the meaning of article 11, paragraph 2, of the European Convention on Human Rights. The Commission determined that the application was inadmissible.

Article 23

Taxation

287. The 1988 Finance Act introduces a system of independent taxation for husbands and wives from April 1990. A husband and wife will then each receive their own tax allowances and each will be responsible for handling his or her own tax affairs. The wife will be entitled to privacy in her own tax affairs in the same way as her husband and all other taxpayers. A wife's income will no longer effectively bear a higher tax charge than that of a single woman. An associated revision of the personal allowances structure will mean that the tax system will no longer tax a married couple more heavily if the husband is the only breadwinner than if the wife is the breadwinner.

288. In the application of Lindsay v. the United Kingdom to the European Commission of Human Rights, the applicants - a married couple in which only the husband had earned income - alleged that the United Kingdom income tax system discriminated against them on a number of grounds. Chiefly, they alleged discrimination on the ground of marriage, in that they were more heavily taxed than if they had been an unmarried couple living together, and on the ground of sex, in that they were more heavily taxed than they would have been if only the wife, not the husband, had had earned income and so had been the main breadwinner. On 11 November 1986, the Commission ruled the application inadmissible, holding that a married couple was not directly analogous to an unmarried couple and that the advantageous position of a married couple in which the wife was the main breadwinner had an objective and reasonable justification. The Commission concluded that in taxation the margin of appreciation allowed to signatory States must be wider than in many other areas.

Divorce

289. The Family Law Act 1986 facilitates the recognition and enforcement of custody orders made in one part of the United Kingdom in another, and provides a simplified jurisdiction which operates in England and Wales, Scotland and Northern Ireland. The Act also makes provision for the recognition in the United Kingdom of decrees of divorce, nullity or legal separation obtained by means of proceedings abroad, if those decrees are effective under the law of the country in which they were obtained.

Exemption from jury service for family commitments

290. Under section 9 (2) of the Juries Act 1974, a person who can show to the satisfaction of the summoning officer that there is good reason may be excused jury service by that officer. There is a right of appeal to the court against an officer's refusal to excuse. Under section 9A of the 1974 Act, there is also a power for the summoning officer to defer jury service.

Cohabitation

291. Although in certain limited statutory areas persons living together as husband and wife are treated the same whether married or not, cohabitation in general carries with it none of the rights or obligations of marriage. In particular, there is no duty of mutual support and, on the breakdown of the relationship, there are no special provisions for maintenance of one cohabitant by another, or for adjusting their rights in property. Such matters are therefore governed by the general law.

292. It is argued that treating cohabitants as if they were married may have major disadvantages. The two commonly cited are that it would (a) undermine marriage, and (b) limit choice, i.e. people may not marry because they do not wish to incur the rights and obligations which marriage entails.

293. Arguably, in a society where there is a general freedom to marry and where, in the absence of marriage, parties may reach enforceable agreements about financial and property arrangements both during the period of cohabitation and after it breaks down, imposing the rules ancillary to marriage on those who are not married would be an unnecessary and undesirable restriction in individual freedom. That is not to say, however, that there may not be particular problems relating to cohabitation which the law may need to address individually.

294. The Law Reform (Husband and Wife) (Scotland) Act 1984 abolished a number of obsolete and discriminatory legal actions and rules in Scottish law. The Family Law (Scotland) Act 1985 made fresh provision in the law of Scotland regarding aliment and financial provision on divorce, in particular requiring that financial provision for a spouse on divorce should involve fair sharing of property, fair account of economic advantage or disadvantage derived by either spouse in the marriage, recognition of the burden of child care, adjustment to independence and prevention of serious financial hardship.

Article 24

Children Bill

295. In 1984, following the recommendation of the Social Services Committee of the House of Commons, a wide-ranging review of public child care law in England and Wales was carried out and in 1985 a report, "Review of child care law", was published. A period of extensive consultation followed and in 1987 the Government published its proposals for reform in a White Paper, "The law on child care and family services". Simultaneously, a review of the private law relating to children was carried out by the Law Commission in England and Wales, which published proposals in a report on guardianship and custody in June 1988.

296. These proposals on the public and private law relating to children formed the basis for major new legislation which was introduced in Parliament in November 1988. The Children Bill which is currently under discussion in Parliament is intended to reduce the complexity of the law on children, to define the rights and duties of parents and to improve the powers available for protecting children. When implemented, it will represent a major revision and clarification of the law relating to children and family services. Nine Acts of Parliament will be repealed, including the Children Act 1975 and the Children and Young Persons (Amendment) Act 1986, referred to below (para. 314).

297. Parental responsibility is identified as a fundamental principle and defined in the bill. The Government's view is that the primary responsibility for the upbringing of children rests with their parents. The State should take the role of being ready to help parents discharge that responsibility, and of intervening compulsorily only where children are placed at unacceptable risk. Local authority care and social services for children should therefore be seen in this context.

298. Part I of the bill sets out the key proposition that the child's welfare is to be the paramount consideration where court decisions are taken concerning a child's upbringing. This legislation will not affect adoption legislation, which provides that the child's interests are to be the first consideration. Guardianship cases and cases of custody and access (e.g. following divorce) are covered by this principle as well as cases involving the public care authorities. Part II concerns orders and proceedings about children other than proceedings in which local authority care or supervision of the child is involved. A general principle is that delay should be minimized in any proceedings.

299. Part III sets out the responsibilities of local authorities towards children and their families. The children include children in need and disabled children, children under five and children in the care of the local authority. A general duty is placed on the local authority to safeguard and promote the welfare of children in its area who are in need and to promote the upbringing of such children by their own families. Emphasis is placed on enabling children in need to remain with their family wherever possible, and on the prevention of family breakdown. The general duty is to be discharged through a range of services which may be provided with the voluntary agreement of the parents. These include day care for children under five who are in need (although authorities are also empowered to provide day-care services for children who are not in need).

300. Accommodation is to be provided for certain categories of children, such as those who are lost or who have been abandoned, either with foster parents or in a children's home, and may also be provided for other children in need with the agreement of their parents. Other services include the provision of home helps and assistance for disabled children as well as advice, guidance and social work support.

301. Part IV relates to care and supervision orders made by courts concerning children. Parental responsibility is transferred to local authorities in cases where it is considered that children risk coming to harm. Contact between parents and children should continue when a child is in the care of a local authority, as long as it is not detrimental to the interests of the child.

302. Part V covers the emergency protection of children. Children at risk of "significant harm" may be made the subject of an "emergency protection order", and it is intended that there will be a balance between the need to protect children from harm and the need to allow parents to challenge any court action. Police may apply for an emergency protection order on behalf of a local authority. Authorities are to be required to investigate cases thoroughly and for other authorities to provide assistance in this task.

Review of child care law in Scotland

303. In Scotland, a separate review of child care law is currently at an advanced stage. The review body was appointed by the Secretary of State in October 1987 to identify options for change in child care law which would simplify and improve arrangements for protecting children at risk and caring for children and families. The final report is expected in spring 1990.

Northern Ireland

304. In Northern Ireland, the law relating to children and their families is also being revised and account is being taken of recent legislative changes which have been effected in the rest of the United Kingdom and of the proposals contained in the Children Bill.

Illegitimacy

305. The United Kingdom has taken steps to remove nearly all legal discrimination against children whose parents were not married to each other at the time of the child's birth. The only exceptions now relate to titles of honour and accession to the Throne. In England and Wales, the Family Law Reform Act 1987 creates a presumption that in all future legislation the question whether a person's parents were married to each other at any time will not be relevant. In particular, under other provisions of the Act:

(a) All children will be treated equally as regards dispositions of property made by will or codicil, and as regards succession on intestacy;

(b) The process by which the parent with custody of the child can apply for a maintenance order for the benefit of the child from the other parent has been reformed, and distinctions between legitimate and illegitimate children removed;

(c) An unmarried father may apply to the court for an order that he is to share parental rights and duties with the mother (and under the Children Bill, the sharing of parental responsibility will be achievable by agreement between the mother and the father);

(d) The procedure by which the father may be registered on the child's birth certificate has been facilitated.

There are plans for similar legislation in Northern Ireland.

306. It should be noted that the father of illegitimate children, while liable to maintain them and entitled to apply to the court for equal parental rights and duties with the mother, does not enjoy parental powers as of right. That is thought to be in the best interests of most children concerned (and is seen as discriminatory between father and mother rather than against the children concerned).

Other legislation on children

307. There have been several other legislative changes in recent years.

308. Section 64 of the Children Act 1975 was implemented in full in May 1984 and included provision for courts to appoint a guardian ad litem in care and related proceedings. The provision of a guardian ad litem service followed in recognition of the possibility of conflict between the interests of parents and their children, and of the need for a child's interests to be investigated and reported to the court by an independent representative. Panels of guardians ad litem have been set up by local authorities in accordance with regulations. The service is now well established and guardians ad litem are considered to assist the quality of decision-making in the proceedings in which they are represented.

Adoption

309. A new framework for adoption in England and Wales reflecting up-to-date practice was also introduced in May 1984 in the form of the Adoption Agencies Regulations 1983, together with provisions which allow courts to declare a child free for adoption before formal placement with prospective adopters. In December 1985, the custodianship provisions of the Children Act 1975 were implemented, enabling persons caring for children on a long-term basis to obtain legal custody.

310. In January 1988, the Adoption Act 1976 came into force, implementing the remaining sections of the 1975 Children Act. Each local authority in England and Wales is required to provide an adoption service to meet the needs of adopted children and their parents, guardians or adopting parents. An approved adoption society may also provide such a service, providing for collaboration between the statutory and voluntary sectors.

311. The Adoption (Scotland) Act 1978, which came into operation on 1 September 1984, consolidates enactments relating to adoption in Scotland, including the provisions of part I of the Children Act 1975. Implementation of those provisions was accompanied by the Adoption Agencies (Scotland) Regulations 1984, which provide an improved framework for the practice and procedures of adoption agencies in Scotland.

312. The Adoption (Northern Ireland) Order 1987, made on 18 December 1987, makes corresponding provision for Northern Ireland. It requires each Health and Social Services Board to provide a full range of adoption services. The Order is supplemented by the Adoption Agencies (Northern Ireland) Regulations 1989 (which mirror the Scottish regulations) and by court rules to regulate adoption procedures in both the High Court and county courts in Northern Ireland. All these provisions came into operation on 1 October 1989.

Other matters

313. Sections 47-55 of the Children Act 1975, which made provision for granting of custody of a child in Scotland, came into force on 1 April 1986. The general effect of the provisions relating to applications by persons other than a parent or guardian was subsequently amended by the Law Reform (Parent and Child) (Scotland) Act 1986, which came into operation on 8 December 1986. The principal effect of the 1986 Act was to repeal the specific entitlement of relatives, step parents or foster parents of a child to sue for custody. Under the new arrangement now in force, any person claiming interest in a child retains a right of application to a court for an order relating to parental rights. That includes those previously entitled specifically under the 1975 Act but extends also to the right of a putative father to apply for an access order.

314. The Children and Young Persons (Amendment) Act 1986 having effect in England and Wales was also implemented in 1988. The Act contains four provisions: a power for the Secretary of State to make regulations governing placement by a local authority of a child in compulsory care with a parent, guardian, reltive or friend; a right for parents or guardians to be made full parties to care proceedings when the court believes that their interests are different from the child's; a right for grandparents to apply to the court or to a single magistrate to be joined as parties to the proceedings; and a right for parents and guardians who were made parties to care-related proceedings to appeal to the Crown Court. These provisions have been assimilated with the Children Bill and will be repealed when the Children Bill is implemented.

315. The Criminal Justice Act 1988 makes a number of changes regarding juvenile offenders, and regarding children and young people. Children under 14 involved as witnesses in crimes of sex or violence may give evidence through a live television link, which it is hoped will prove less intimidating. Penalties for cruelty to children have been increased.

316. In Scotland, the rules of evidence and the practices of the courts in relation to child witnesses differ from those in England and Wales. The Scottish Law Commission has undertaken a detailed study of the evidence of children as part of its consideration and, in an effort to ensure a wide measure of public confidence in any change in the law, it issued, in June 1988, a discussion paper entitled "The evidence of children and other potentially vulnerable witnesses". It is hoped that the Commission's final report will be available shortly.

Services for children in the care of local authorities

317. The Child Care Act 1980 continues to impose a duty on local authorities in England and Wales to receive children into their care if they are deserted, orphaned or if their parents are unable to provide for them and intervention is necessary in the interests of the child. As explained in the second report, the Act requires a local authority to give first consideration to the need to promote and safeguard the welfare of the child in its care when reaching any decisions concerning the child's upbringing. In Scotland, similar provision is made in terms of the Social Work (Scotland) Act 1968. In Northern Ireland, corresponding provision is contained in the Children and Young Persons (Northern Ireland) Act 1968.

318. The majority of children in local authority care are fostered (boarded out), reflecting the importance attached to placement with a family as the preferred substitute for most children who cannot be cared for within their own families. New regulations and accompanying guidance were issued in 1988 to govern these placements. The regulations, which replaced the Boarding Out Regulations 1955, aim to provide a more effective and up-to-date framework for foster care practice and reflect the changes which have taken place in foster care in recent years.

319. Boarding out and fostering in Scotland is regulated by the Boarding Out and Fostering of Children (Scotland) Regulations 1985, which apply to the action of a local authority or voluntary organization under the Social Work (Scotland) Act 1968. In Northern Ireland, boarding out and fostering is governed by the Children and Young Persons (Boarding Out) (Northern Ireland) Regulations 1976.

320. The Accommodation of Children (Charge and Control) Regulations and accompanying guidance were also issued in 1988 to govern the placement of children in local authority care in England and Wales with a parent, guardian, relative or friend. The Children and Young Persons (Amendment) Act 1986 empowers the Secretary of State for Social Services to make regulations governing placement of children in care with a parent, guardian, relative or friend under section 21 (2) of the 1980 Act.

321. Existing statutory powers allowed the Secretary of State to make regulations to govern the way in which local authorities discharged their responsibilities for children in their care whom they had placed with foster parents or in children's homes, but no regulating power existed in relation to the type of arrangement now to be covered by regulations; these arrangements tended to be known as "home on trial". This term is out of keeping with the aims and expectations involved in such situations, and such arrangements are referred to in the regulations and the associated guidance as placement under the charge and control of a parent, guardian, relative or friend. The 1988 Regulations reflect recognition of the difficulty of such placement decisions and aim to provide a statutory framework which will underpin good practice; they came into force on 1 June 1989.

Child abuse

322. Statutory responsibility for the care and protection of children who may be subject to abuse rests with local authority social services departments, although health services, the probation services, police, education and voluntary organizations may also be involved.

323. There has been a worrying increase in the reported incidence of child abuse, in particular sexual abuse. The Government has taken action to improve the handling of child abuse cases; its programme includes legislative changes, the development of guidance for professionals working with children, training and research.

324. In 1984, the Department of Health began a comprehensive review of guidance in relation to child abuse and arranged a series of meetings aimed at improving co-ordination between agencies involved in the care and protection of children. Many points raised at these meetings were later incorporated in a consultation document which was published in May 1986. A final version of

the guidance was issued in July 1988 under the title "Working together - a guide to arrangements for inter-agency co-operation for the protection of children from abuse", which took account of lessons learned from inquiries, including the judicial inquiry into child sexual abuse in Cleveland in 1987, held since the consultation document was issued. Parallel guidance was issued to the police and schools and professional guidance was issued to doctors, nurses and social workers. Corresponding guidance has been issued or is being prepared for the different authorities and professionals in Scotland and Northern Ireland.

325. In October 1986, the Government launched a central training initiative for the training of managers and practitioners in child abuse work. The initiative consists of seven projects at present. In July 1988, the Government announced a new training support programme to support the training of social services staff involved in child care, including child abuse.

326. Arrangements have also been made to receive more accurate data about the incidence of child abuse. In July 1987, the Minister of Health announced arrangements for the collection of annual statistics on child abuse from child protection registers held by local authorities in England and Wales. A pilot study sought information for the period ending 31 March 1988 and a national annual return has been introduced from March 1989. The Secretary of State for Scotland has also set in train work which will lead to the production of local and national statistics on child abuse. In Northern Ireland, statistics on child abuse have been produced annually since 1981.

327. Provisions in the Children Bill are intended to improve the powers of local authorities to protect children at risk. The existing duty to investigate circumstances which suggest that there may be grounds for care proceedings will be replaced by a more active duty to investigate any case where it is suspected that the child is suffering harm or is likely to do so.

328. A new Emergency Protection Order will replace the Place of Safety Order. The new order will enable an authority to gain access to a child and remove him or her to a place of protection where there is reasonable cause to believe that the child's health or well-being would otherwise be damaged. The order will last for eight days only; authorities will be able in exceptional circumstances to apply for an extension for a further seven days, which will be open to challenge by a parent. Parents will also be able to appeal to a court against the making of an Emergency Protection Order after 72 hours.

Under-fives day care

329. The Department of Health has sponsored several initiatives to develop day care services for children and families in the community. As part of the Helping the Community to Care Initiative, a total of £900,000 was made available over three years from October 1986 to the self-help and families project. The project is primarily focused on self-help groups run by voluntary organizations working with families and children. The Department finances eight development officer posts to test the idea that such a person can help disadvantaged people to help themselves.

330. Between October 1983 and March 1987, the Under-Fives Initiative enabled 15 national voluntary bodies to set up almost 100 projects to help families with young children. Most projects are still operating. The Government made available some money in 1987/88 for tapering grants to help some of the projects set up during the initiative to find alternative sources of funding. The Government also set up a small grants scheme in 1987/88 to give six national voluntary organizations a lump sum which they distributed in the form of small capital grants to local groups providing services for under-fives and their families. This scheme is now in its third year of operation. An amount of £250,000 was spent in 1987/88 in this way and of £350,000 in 1988/89. A seventh organization is now taking part in the scheme.

331. The Children Bill includes provisions on local authorities' duties and powers to provide day care and supervised activity for children aged under five and not at school, and for school-age children outside school hours. The bill distinguishes between children in need, who are defined as those who, without the local authority providing or arranging a service, are unlikely to maintain or achieve a reasonable standard of health or development as other children. For children in need, the local authority is to be given a general duty to provide day care services as it considers appropriate. For other children, local authorities are to have a power - i.e. discretion - to provide day care services. In addition, local authorities may provide support for carers and parents whose children receive day care.

332. The bill will include provisions to update and modernize the Nurseries and Childminders Regulation Act 1948. These are intended to make the regulation of day care services clearer and easier to enforce. The areas to be covered include clarifying the age limit and conditions to be attached to registration and making registration subject to regular inspection. Local authorities will also continue to have power to give grants.

Employment of children

333. Provisions in legislation and local authority by-laws governing the employment of children under 16 were described in the second periodic report. The overriding aim of legislation and by-laws continues to be to permit children to be employed only to the extent that their health, education and general welfare do not suffer.

334. The Government notified the Council of Europe on 21 August 1989 of its decision to denounce its acceptance of article 7 (8) of the European Social Charter with effect from 26 February 1990. Article 7 (8) reads: "With a view to ensuring the effective exercise of the right of children and young persons to protection ... persons under 18 years of age shall not be employed in night-work with the exception of certain occupations provided for by national laws or regulations."

335. The Government's decision is based on its continuing commitment to remove unnecessary and outdated barriers to employment and to extend opportunities to young people. There is no question of reducing meaningful protection. Indeed, the Government is concerned to ensure that requirements continue in force where it is satisfied that there are health and safety reasons for their retention; it does not believe that restrictions on night-work fall into that category.

336. The Government considers that in England and Wales and in Scotland the United Kingdom is in compliance with article 7 (3) of the European Social Charter which states that: "persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education". There has, however, been controversy in relation to provisions in by-laws in Northern Ireland; the Committee of Independent Experts to the Charter has argued that the by-laws are inconsistent with the objectives of article 7 (3). The Government believes that the criticism by the Committee is based on a misinterpretation of Northern Ireland law, but it is none the less intended to include provisions in the revised child care legislation for Northern Ireland which will secure compliance with article 7 (3) of the Charter.

Protection of children

337. Article 24 of the Covenant deals with measures of protection for children. There have been a number of developments in the United Kingdom since the last periodic report which increase the protection afforded to children.

Access by a parent to a child in care

338. The European Court of Human Rights found the United Kingdom in breach of the European Convention on Human Rights in this area in five judgements in 1987. In all five cases the European Court, held that there had been a breach of article 6, paragraph 1, of the Convention. That article provides, inter alia, that, in the determination of his civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 14 of the International Covenant on Civil and Political Rights makes similar provision. In four cases, the Court held that there had been a breach in that the applicants had been unable to have the question of access to their children who were in local authority care determined in court proceedings. In the fifth case, the Court held that a breach had occurred because proceedings relating to the applicant's access to her child in local authority care had not been concluded within a reasonable time.

339. In respect of access decisions, the Health and Social Services and Social Security Adjudications Act 1983 had gone some way towards anticipating the judgement of the Court. That Act enabled parents to apply to the juvenile court for an access order to be made when a local authority terminated or refused all access to a child in care. The Act also required the Secretary of State to issue a code of practice on access to children in care (issued in 1983).

340. The Court also found against the United Kingdom Government in respect of article 8 of the European Convention. Article 8 requires that there shall be no interference by a public authority with the right to respect for family life, except for reasons such as the protection of health or morals or the protection of the rights and freedom of others. In this respect, the Court considered that three applicants had been insufficiently involved in the local authority's decision-making process, and in one case that the question of her future relationship with the child had been determined by mere passage of time and not in the light of all relevant considerations.

341. The Children Bill mentioned above is drafted throughout with the intention of promoting the involvement of parents in decision-making processes. In particular, the position in relation to involvement of parents with all children looked after by a local authority is dealt with in clause 19, which defines the local authorities' general duty. In addition, the bill requires local authorities to provide a procedure to resolve disputes and complaints.

342. There is another separate issue which arose before the European Commission of Human Rights in a case against the United Kingdom Government. It concerns a putative father's status in relation to child care law and access provisions. The implementation on 1 April 1989 of section 2 of the Family Law Reform Act 1987 provided the opportunity for a putative father to apply for access under section 12B of part 1A of the Child Care Act 1980. This would allow the paternity issue to be decided in respect of access to a child in local authority care in the course of access proceedings. The Children Bill contains an amendment to the definition of "parent" in the Child Care Act 1980, as amended by the Family Law Reform Act 1987, to put this question beyond doubt.

343. The Children Bill also covers all these matters in clause 31, making it clear that the parents (including unmarried fathers), guardians or anyone with leave of the court may apply for a contact order even if contact has not been withheld or terminated. When the Children Bill is enacted, the law of the United Kingdom will be fully consistent with the decision of the European Court, and with the principles of articles 14 and 24 of the International Covenant on Civil and Political Rights as they affect the protection of children.

344. A child who is a British citizen cannot be deported or removed from the United Kingdom. It is a matter for the parents to decide whether the child should accompany them if they are deported or whether they wish to make arrangements for the child's care in the United Kingdom after they have left. The presence of a child who is a British citizen gives the parents no claim to remain in the United Kingdom, but it will be a compassionate factor which will be taken into account before any decision to deport the parents is taken.

Child prostitution

345. The Government is satisfied that the criminal law offers adequate protection to children who are at risk of being drawn into prostitution. There is no evidence of any grave problems of child prostitution in the United Kingdom, but the Home Office is now represented on the Select Committee of Experts on Sexual Exploitation, Pornography and Prostitution of and Trafficking in Children and Young Women of the Council of Europe.

Article 25

Civil Service

346. United Kingdom civil servants are required to discharge loyally the duties assigned to them by the government of the day, of whatever political persuasion. Accordingly, there are rules governing political activities by civil servants, the purpose of which is to allow them the greatest possible

freedom to participate in public affairs consistent with that obligation. The rules are concerned with political activities liable to give public expression to political views rather than with privately held beliefs and opinions.

347. Certain civil servants are debarred from national politics, e.g. parliamentary candidature or speeches or articles in public on controversial national issues. In other cases this is permissible, or special permission may be given. Most civil servants can participate in local politics, although some must seek permission first.

348. Generally, there are no restrictions on the private activities of civil servants, provided that these do not bring discredit on the Civil Service, and that there is no possibility of conflict with official duties. For instance, a civil servant requires departmental permission before taking part in any outside activity which involves the use of official experience, or before accepting a directorship in any company holding a contract with his or her department.

349. People may not be employed in the Civil Service in connection with work that is vital to the security of the State if they:

(a) Are, or have recently been, a member of a communist or Fascist organization, or of a subversive group, acknowledged as such by the appropriate Minister, whose aims are to undermine or overthrow parliamentary democracy in the United Kingdom of Great Britain and Northern Ireland by political, industrial or violent means; or

(b) Are, or have recently been, sympathetic to or associated with members or sympathizers of such organizations or groups, in such a way as to raise reasonable doubts about their reliability; or

(c) Are susceptible to pressure from such organizations or groups.

350. The diplomatic service and certain other posts in certain departments are closed to persons who are thought to fall within the above categories.

351. To ensure that persons employed in exceptionally secret work are reliable, departments make inquiries known as positive vetting. This entails completion by the person of a security questionnaire, and certain background inquiries by investigating officers. The inquiries are concerned with political sympathies or associations of the kinds mentioned above and with any characteristics which might be potential risks to security.

352. One of the factors relevant in deciding whether persons not of United Kingdom origin are reliable is the degree to which they have assimilated to the country. Their length of residence in the United Kingdom is taken into account. Where a post is one for which the person has to be positively vetted, a period of at least 10 years' residence in the United Kingdom is generally necessary. For work of less sensitivity, five years' residence is normally required. Successful candidates not of United Kingdom origin who do not satisfy the residence requirements cannot normally be appointed to posts which involve, or are likely to involve, regular access to classified work.

353. All members of the Diplomatic Service must undergo positive vetting. Homosexuality, even if acknowledged, is a bar to employment in the Diplomatic Service.

354. The changes notified at paragraph 103 of the second periodic report continue to represent the current position. The latest version of the General Regulations includes an amendment to the nationality regulation (12.1), which now simply has a requirement for candidates to be Commonwealth citizens, British protected persons or citizens of the Republic of Ireland. Previously, candidates other than British citizens were subject to a United Kingdom residential requirement plus parental nationality restrictions.

355. On 13 April 1989, the Minister announced certain changes in responsibility for civil service recruitment. After 1991, there will be a stronger monitoring role for the Civil Service Commission, backed up by legislation, to ensure that the principle of fair and open competition and selection on merit is maintained.

356. A statement setting out the current position with regard to the Civil Service as an equal opportunities employer is attached (see annex to this report).

Local government officers

357. There has been a long tradition in the United Kingdom that senior local government officers, like senior civil servants, do not undertake public political activity, since the public profession of political views is difficult to reconcile with impartial service to a local authority as a whole. Recently, with the increased politicization of local government, that tradition has been undermined. The Local Government and Housing Bill, which is currently before Parliament, seeks to introduce into local government a requirement that senior local government officers, like senior civil servants, do not undertake public political activity.

Ethnic minorities

358. This section concentrates on those members of ethnic minorities who regard themselves as such, principally those with an Afro-Caribbean or Asian background (although many will have been born in the United Kingdom).

Lay magistrates

359. A survey published in March 1988 showed that the proportion of ethnic minority magistrates appointed in England and Wales increased from 1.8 per cent in 1980 to 4.6 per cent in 1986. On 1 January 1987, 1.9 per cent of serving magistrates were of an ethnic minority background (455 out of 23,730). This survey covered the whole of England and Wales with the exception of the counties of Greater Manchester, Lancashire and Merseyside, where appointments to the bench are made by the Chancellor of the Duchy of Lancaster. The Government now has an informal system of monitoring the number of magistrates from the ethnic minority communities appointed.

Judges

360. There is only 1 judge from the ethnic minorities out of 415. The Government hopes that the numbers will increase as younger lawyers reach the stage where they can be considered for judicial appointment.

Parliament and local government

361. There are four members of the House of Commons who are from the ethnic minority groups; they represent the whole community in their constituencies. In the House of Lords, there are two ethnic minority life peers. In local government, ethnic minority representation is increasing: many such councillors have been elected and a few local authorities have chosen mayors from the ethnic minority communities.

Education

362. There are no figures available centrally on the ethnic origin of school pupils, teachers or students in further or higher education, but arrangements to collect information are in hand.

Schools

363. On 4 April 1989, the Department of Education and Science (DES) issued a circular setting out the arrangements for collection of ethnically based statistics on schoolteachers in schools maintained by the local education authorities in England and Wales. (Separate arrangements are being made in Scotland.) The circular requires each local education authority to collect information about the ethnic origin of all its schoolteachers and to make an annual return to the DES and the Welsh Office, the first of which will be in January 1990. The Government also intends to collect separately similar information on the teaching staffs of city technology colleges and of grant-maintained schools. These data will help to monitor the effectiveness of policies designed to effect an increase in the proportion of teachers from the ethnic minorities and to ensure that fair and equal employment opportunities are provided.

364. On 25 July 1989, the DES issued a circular setting out the arrangements for the collection of ethnically based statistics on school pupils in maintained schools in England. (Wales and Scotland are making separate arrangements.) The statistics will be collected from September 1990 when a pupil enters primary or secondary school, i.e. when pupils are aged 5 or 11 years. The data will in due course assist the DES, local education authorities, schools, parents and others to ensure that the education provided in schools meets the needs of all pupils and thus helps secure equality of opportunity for those who are from the ethnic minorities.

Further and higher education

365. On 25 July 1989, it was announced that there should be national data collection on ethnicity for each and every student on enrolment for further education. This would be achieved in incorporating a question in the Further Education Statistical Record, the first of which would be returned in November 1990. In addition, both the University Central Council on Admissions (UCCA) and the Polytechnic Central Admissions System have agreed

to include an ethnicity question in their admission material for full-time first degree courses from 1990/91 onwards. UCCA data will then be transferred to the University Statistical Record in respect of those students enrolled at university.

Civil Service

366. Four per cent of the non-industrial staff in the Civil Service are from the ethnic minorities, but the proportion at executive officer level and above is only 2.2 per cent. Of new entrants, however, 8.2 per cent are from the minorities, and at executive officer level and above 3.9 per cent of new entrants are from the minorities.

Recruitment

367. Recruitment drives aimed specifically at members of the ethnic minorities are part of the recruitment process for the police, the probation service, the prison service and the Civil Service, among other institutions. (In England and Wales, just under 1 per cent of police and prison officers have an ethnic minority background, but just over 2 per cent of probation officers come from such a background.)

Women in public life

Judges

368. One Lord Justice, 1 High Court judge and 16 circuit judges are women. This represents only 4 per cent of the judiciary at those levels but is some improvement on the past.

Parliament

369. There are 41 women Members of Parliament, 6.2 per cent of the House of Commons. This is a higher percentage than in any Parliament since the Second World War.

Government

370. The Prime Minister is the only woman member of the Cabinet, but 5 junior ministers out of 69 are women.

Public bodies and Civil Service

371. In 1987, 19 per cent of appointments to public bodies were of women. This represents only a very slight increase since 1984. In the Civil Service, 48 per cent of the staff are women, although they are overwhelmingly concentrated at the lower grades. Only one Permanent Secretary is a woman, but the proportion of administrative assistants (the lowest non-industrial grade) is 75 per cent. The difference between women's and men's promotion rates has however narrowed over the years.

Article 27

372. The position of ethnic and religious minorities has been discussed above. The position of minority languages is as follows.

Non-indigenous minority languages

373. General education in a minority language is not offered as part of the mainstream curriculum in schools. This is because it is considered to be more advantageous to the pupil to be taught in English, the official language. There may however be initial bilingual support where a child's first language is not English. At secondary level, certain mother tongue languages may be taught as a foundation subject, as part of the National Curriculum, and many children from an Asian background receive mother tongue teaching outside school hours in classes organized and paid for by the community.

374. It is not the practice to use minority languages for official business, but the Government and other relevant public bodies ensure that as much as possible of the information they distribute is translated into various minority languages to ensure that members of those minorities are not disadvantaged in any way and are aware of their rights. Interpreters are used where this is considered necessary.

Main indigenous minority languages

Welsh

375. The Secretary of State for Wales has continued the Government's policy of supporting the Welsh language through grant aid. In addition, two bodies have been established to advise the Government on the use and future development of the Welsh language. In 1985, the Welsh Language Education Development Committee was set up to provide a forum for discussion of policy by those responsible for the provision of Welsh medium education; to co-ordinate activities in Welsh language education, thereby ensuring the most effective and economical use of available resources; to disseminate information and to identify areas for further research and development. The Committee's resources are provided through section 21 of the Education Act 1980.

376. In July 1988, the Secretary of State for Wales established the Welsh Language Board and set it the following tasks: to develop voluntary codes of practice for use of the Welsh language in the public and private sectors; to advise on the use of Welsh in public administration; to investigate complaints and discuss such complaints with the parties involved and advise on practical solutions where possible; to review and report on all aspects of grant-supported activity (i.e. for Welsh language grant support); to liaise with statutory and non-statutory bodies on language issues; and to advise the Secretary of State on matters relating to the Welsh language and consider specific issues referred to it by the Secretary of State. The Board is funded under section 26 of the Development of Rural Wales Act 1976. The Welsh Language Board works through a number of special sub-committees concentrating on defined areas and issues related to the promotion and development of the Welsh language, the use of the Welsh language by local authorities and public bodies, and the use of the Welsh language in the private sector. They are also examining closely specific legislative issues which may need amendment in due course.

377. The Education Reform Act 1988 provides a statutory place for Welsh in the curriculum of schools in Wales. This provision will be an essential building block in the future development of the language through school and on to later life.

378. The direct financial support offered in 1989/90 by the Secretary of State for Wales totals £4,600,000. This is divided between allocations under section 21 of the Education Act 1980 and section 26 of the Development of Rural Wales Act 1976. This is in addition to the significant expenditure by local education authorities, arts and cultural organizations and the Fourth Television Channel (S4C) in Wales.

Gaelic

379. The Government is ensuring that the Gaelic language in Scotland is increasingly protected and developed. In 1989/90, Government funding of Gaelic organizations totals £300,000, with a further £850,000 payable to Scottish local authorities under the specific grant scheme for Gaelic education. This scheme was introduced in 1986/87 and has been an outstanding success, with an increasing variety of projects, including the preparation of a Gaelic data base and the development of initiatives in community education and the arts. A notable development in this scheme has been an increase in the number of Gaelic medium primary units in schools, from 12 to 20 in the last year.

Irish

380. The Government recognizes and respects the special importance of the Irish language to a significant number of people in Northern Ireland. Progress has been made in several areas: the Government is funding research on Irish place-names and has carried out research on the numbers of Irish-speakers in Northern Ireland; it has increased financial support for Irish language cultural activities; and an Irish language map and gazetteer has been published.

381. Under proposals for educational reform, pupils in Northern Ireland will be required to choose at secondary level to study one or more of the following languages: French, German, Spanish, Italian or Irish; they will thus be able to take Irish instead of one of the major European Community languages. The Government is seeking to promote a more constructive debate about cultural diversity in Northern Ireland, including the contribution which the Irish language makes to Northern Ireland's rich cultural heritage.

Annex

Legislation, regulations and reports referred to in the report */

Extradition Act 1870 and 1989

Prevention of Corruption Act 1904

Official Secrets Acts 1911, 1920, 1989

Children and Young Persons Acts 1933 and 1963

Public Order Acts 1936 and 1986

Nurseries and Childminders Regulation Act 1948

British Nationality Acts 1948 and 1981

Obscene Publications Act 1959

Backing of Warrants (Republic of Ireland) Act 1965

Local Government Act 1966

Criminal Justice Act 1967

Criminal Law Act 1967

Fugitive Offenders Act 1967

Welsh Language Act 1967

Children and Young Persons (Northern Ireland) Act 1968

Social Work (Scotland) Act 1968

Immigration Appeals Act 1969

Equal Pay Act 1970

Equal Pay (Northern Ireland) Act 1970

Immigration Act 1971 and 1988

Industrial Relations Act 1971

Misuse of Drugs Act 1971

Northern Ireland Constitution Act 1973

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*/ A number of these documents are available for consultation by members of the Committee in the files of the Secretariat.

Health and Safety at Work, etc. Act 1974

Juries Act 1974

Prevention of Terrorism (Temporary Provisions) Acts 1974, 1976, 1984 and 1989

Trade Unions and Labour Relations Act 1974

Children Act 1975

Criminal Procedure (Scotland) Act 1975

Sex Discrimination Act 1975

Adoption Act 1976

Development of Rural Wales Act 1976

Fair Employment (Northern Ireland) Act 1976

Race Relations Act 1976

Adoption (Scotland) Act 1978

Northern Ireland (Emergency Provisions) Acts 1978 and 1987

Protection of Children Act 1978

Child Care Act 1980

Criminal Justice (Scotland) Act 1980

Education Act 1980

Broadcasting Act 1981

Criminal Justice Act 1982

Health and Social Services and Social Security Adjudications Act 1983

Mental Health Act 1983

Social Services and Social Security Adjudication Act 1983

Cable and Broadcasting Act 1984

Codes of Practice issued under the Police and Criminal Evidence Act 1984

Data Protection Act 1984

Law Reform (Husband and Wife) (Scotland) Act 1984

Police and Criminal Evidence Act 1984

Video Recordings Act 1984

Cinemas Act 1985

Family Law (Scotland) Act 1985

Interception of Communications Act 1985

Local Government (Access to Information) Act 1985

Prosecution of Offenders Act 1985

Children and Young Persons (Amendment) Act 1986

Education (No. 2) Act 1986

Family Law Act 1986

Family Law Reform Act 1987

Housing and Planning Act 1986

Law Reform (Parent and Child) (Scotland) Act 1986

Access to Personal Files Act 1987

Family Law Reform Act 1987

Criminal Justice Act 1988

Education Reform Act 1988

Employment Act 1988

Fair Employment (Northern Ireland) Act 1989

Finance Act 1988

Firearms (Amendment) Act 1988

Housing Act 1988

Police and Criminal Evidence (Northern Ireland) Order 1989

Security Service Act 1989

Boarding Out Regulations 1955

Immigration Rules

Prison Rules

Prison Standing Orders

Police (Discipline) (Scotland) Regulations 1967

Children and Young Persons (Boarding Out) (Northern Ireland) Regulations 1976

Sex Discrimination (Northern Ireland) Order 1976

Secure Accommodation (No. 2) Regulations 1983

Adoption Agencies Regulations 1983

Adoption Agencies (Scotland) Regulations 1984

Prevention of Terrorism (Supplemental Temporary Provisions Order 1984)

Prevention of Terrorism (Supplemental Temporary Provisions) (Northern Ireland) Order 1984

Boarding Out and Fostering of Children (Scotland) Regulations 1985

Police (Discipline) Regulations 1985

Hong Kong (British Nationality) Order 1986

Secure Accommodation (No. 2) (Amendment) Regulations 1986

Adoption (Northern Ireland) Order 1987

Police (Northern Ireland) Order 1987

Public Order (Northern Ireland) Order 1987

Accommodation of Children (Charge and Control) Regulations 1988

Criminal Evidence (Northern Ireland) Order 1988

Royal Ulster Constabulary (Discipline and Disciplinary Appeals) Regulations 1988

Young Offender Institution Rules 1988

Sex Discrimination (Northern Ireland) Order 1988

Adoption Agencies (Northern Ireland) Regulations 1989

Firearms (Amendment) (Northern Ireland) Order 1989

White Paper: The Law on Child Care and Family Services (1987)

Green Paper: Punishment, Custody and the Community (1988)

White Paper: Broadcasting in the '90s, Competition, Choice and Quality (1988)

White Paper: Employment for the 1990s (1988)

Guidance Manual on Adjudications

Life Expectancy tables

Probation Service, Police: Statement on Racial Discrimination

Report by Law Commission for England and Wales into the common law offences of blasphemy and blasphemous libel

Report of War Crimes Inquiry

Statement on the Civil Service as an Equal Opportunity Employer

Guide to Manpower Policies and Practices 1978

Code of Practice on Access to Children in Care (1983)

Review of Child Care Law (1985)

Policy Statement on Racial Discrimination

H.M. Prison Service for England and Wales 1986

Guide to Effective Practice 1987

Report of Judicial Inquiry into Child Sexual Abuse in Cleveland 1987

Report by Law Commission for England and Wales on Guardianship and Custody (June 1988)

Scottish Law Commission: Discussion paper on the evidence of children and other potentially vulnerable witnesses (June 1988)

Department of Health: Working Together - A Guide to Arrangements for Inter-Agency Co-operation for the Protection of Children from Abuse (July 1988)

Report by H.M. Chief Inspector of Prisons for Scotland into conditions and arrangements for accommodating persons detained under the Immigration Acts and members of ethnic minority groups - 5 July 1989

Home Office Circular to Police Forces: Guidelines on Issue and Use of Firearms

Annual Report of Interception Commissioner for 1988

Part II. REPORTS OF THE STATES OF JERSEY, GUERNSEY AND THE ISLE OF MAN GOVERNMENT

A. STATES OF JERSEY

1. This is the third report submitted by the States of Jersey under article 40, paragraph 1, of the Covenant. Since the second report (CCPR/C/32/Add.5, annex), submitted in 1984, the measures listed below have been taken which are relevant to the provisions of the Covenant.

Article 3

2. The Island authorities have completed their review of the laws of succession, and legislation is being drafted which will result in males and females being treated equally.

Article 4

3. The Prevention of Terrorism (Temporary Provisions) Act 1984 was extended to Jersey by the Prevention of Terrorism (Temporary Provisions) Act 1984 (Jersey) Order 1984.

Article 6

4. The death penalty was abolished by the Homicide (Jersey) Law 1986.

Article 7

5. A law has been drafted which will make provision similar to section 134 of the Criminal Justice Act 1988 for the statutory offence of torture.

Article 17

6. The Data Protection (Jersey) Law 1987 establishes a system for regulating the use of automatically processed information relating to individuals and the provision of services by computer bureaux in respect of such information, and enables individuals who are the subject of such data to obtain access to them, to have them corrected or erased if they are inaccurate, and to be awarded compensation in appropriate cases, thereby enabling Jersey to comply with the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Annex

Legislation referred to in the report */

Prevention of Terrorism (Temporary Provisions) Act 1984 (Jersey) Order 1984

Homicide (Jersey) Law 1986

Data Protection (Jersey) Law 1987

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*/ These documents are available for consultation in the files of the Secretariat.

B. STATES OF GUERNSEY

1. Since the second report by the States of Guernsey (CCPR/C/32/Add.5, annex), a number of relevant changes to the law have taken place in Guernsey. These are described below. The comments contained in part I of the initial report (CCPR/C/1/Add.39, annex 2) and part I of the second report remain valid. This report covers the Bailiwick of Guernsey, comprising Guernsey, Alderney, Sark and other dependencies of Guernsey.

Article 1

2. The Government of Alderney Law 1987 repeals and replaces the Government of Alderney Law 1948, as amended, a copy of which was annexed to the initial report, and related legislation. The function of the new law is mainly to consolidate the existing legislation.

Article 2

3. The Administrative Decisions (Review) (Guernsey) Law 1986 creates a review board system to provide a remedy for a person who is aggrieved by any decision or act or omission of a committee or department of the States of Guernsey where there is no right of appeal to any tribunal or court, or where it would not be reasonable to expect the complainant to resort to such right.

Article 3

4. The Committee of the States of Guernsey appointed on 29 June 1983, and referred to in part II of the second report, reported to the States on 30 May 1985. In consequence of that report, the State of Guernsey resolved, inter alia:

(a) To direct the States Labour and Welfare Committee to consider, in consultation with the appropriate bodies, the provisions of local agreements on pay and conditions in the horticultural, selling, accommodation and catering industries, and to use its best endeavours to ensure that all forms of discrimination are removed therefrom in consonance with the provisions of article 2(2) (b) and (c) of the ILO Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (Convention No. 100), and to report to the States thereon from time to time, and

(b) To direct the States Insurance Authority to consider what changes it would be necessary to make in the social insurance and supplementary benefit laws to enable males and females to be treated equally.

5. In consequence of the above resolution, the States passed an ordinance entitled Supplementary Benefit (Classes of Persons to whom the Law applies) Ordinance 1988. An exhaustive list of the classes of persons now entitled to benefit under the Supplementary Benefit (Guernsey) Law 1971, as amended, is set out in the Ordinance. The persons now included who were not formerly entitled are, inter alia:

(a) Men over 60 years of age;

(b) Single men supporting a family alone;

(c) A husband, or cohabitee, supporting children in place of a woman who is detained in legal custody;

(d) A man who has given up his employment to care for his children because his wife is in hospital or is unable to care for them;

(e) The husband or cohabitee who has given up his employment to care for his incapacitated wife or cohabitee.

Article 4

6. The Prevention of Terrorism (Temporary Provisions) Act 1984 was extended, with modifications, to Guernsey.

Article 7

7. A new law is in preparation which will make provision similar to section 134 of the Criminal Justice Act 1988 for the statutory offence of torture.

Article 10

8. The new prison, to which reference was made in part II of the second report, is due to be completed and in use before the end of 1989. New premises have been secured for the police station which will (in due course) facilitate the holding of prisoners prior to appearance in court.

9. The Prison Administration (Guernsey) Ordinance 1959, as amended, a copy of which was annexed to the initial report, has been further amended by the Prison Administration (Amendment) (Guernsey) Ordinance 1986. The principal relevant amendments are as follows:

(a) A person removed, while in custody, to court or any other place outside prison, shall wear his own clothing or clothing different from that provided for use while in prison;

(b) Reduction of the minimum sentence entitling a prisoner to be eligible for remission for good behaviour from 31 days to 5 days;

(c) Exclusion of dietary punishment and its replacement by forfeiture of remission of sentence and stoppage of earnings;

(d) Exclusion of corporal punishment;

(e) Relaxation of the rules relating to the sending and receiving of letters and visits;

(f) Provision, in the case of prisoners under 21 years of age, for work training and instruction to assist the acquisition of skills and encourage self-discipline; for vocational training, physical education and class teaching; and for contact with outside agencies and the Probation Service.

A further amendment (to section 88), removing the Governor's obligation to receive untried prisoners, will be implemented when the new police station with adequate facilities has been completed.

10. The Criminal Justice (Day Training Centre) (Guernsey) Law 1989 makes provision for the establishment of a day training centre at the prison for offenders aged 17 and over convicted of an imprisonable offence or who fail to comply with a probation order, to receive training and instruction to enable them to acquire habits of self-discipline, while subjecting them to prison-style discipline

11. A projet de loi entitled "Parole Review Committee (Guernsey) Law 1988" (which has been approved by the States of Guernsey and is awaiting Royal Sanction) provides for the release on licence of serving prisoners.

12. The Magistrates Court (Juvenile Cases) (Procedure) Rules 1985 repeal and replace the 1956 Rules, a copy of which was annexed to the initial report.

13. The Juvenile Court (Guernsey) Law 1988 establishes a juvenile court in place of the previous jurisdiction exercised by the magistrates court; it contains provisions relating to the constitution, venue and procedure of the new court, which will deal with persons under the age of 17 charged with offences, in need of care or control or brought before the court for non-attendance at school.

Article 12

14. The Housing (Control of Occupation) (Guernsey) Law 1982 has been amended by the Housing (Control of Occupation) (Amendment) (Guernsey) Law 1988.

Article 17

15. The Data Protection (Bailiwick of Guernsey) Law 1986 establishes a system for regulating the use of automatically processed information relating to individuals and the provision of services by computer bureaux in respect of such information and enables individuals who are the subject of such data to obtain access to them, to have them corrected or erased if they are inaccurate, and to be awarded compensation in appropriate cases, thereby enabling the Bailiwick of Guernsey to comply with the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (which was ratified on behalf of the Bailiwick on 26 August 1987).

Article 23

16. The Domestic Proceedings and Magistrates Court (Guernsey) Law 1987 replaces the "Loi relative à la séparation de mariés en police correctionnelle (1930)" and amends other legislation relating to matrimonial proceedings in the Magistrates Court jurisdiction. Inter alia, the new law removes existing inequalities and anomalies as between husband and wife in relation to separation, maintenance, custody and access orders and also improves the procedures for the enforcement of maintenance orders made against the fathers of illegitimate children under the Loi relative à l'entretien des enfants illégitimes (1927).

Article 24

17. The Protection of Children (Bailiwick of Guernsey) Law 1985 makes provision for the further protection of the welfare of children by creating new offences of indecent conduct towards children; possessing, for commercial purposes, printing, publishing selling or letting on hire publications which are harmful to children; and taking, distributing or possessing indecent photographs of children.

18. The Education (Amendment) (Guernsey) Law 1987 amends the Education (Guernsey) Law 1970 to make provision for the education of children with special educational needs. The Law Reform (Miscellaneous Provisions) (Guernsey) Law 1987 strengthens the inherent power of the Royal Court of Guernsey to protect the personal property of a minor by enabling the Court to appoint a person to hold and administer such property, to give directions to such person, and to require security to be lodged and regular accounts to be delivered.

Annex

Legislation referred to in the report */

The Government of Alderney Law 1987

The Administrative Decisions (Review) (Guernsey) Law 1986

The Supplementary Benefit (Classes of Persons to whom the Law applies) Ordinance 1988

The Prison Administration (Amendment) (Guernsey) Ordinance 1986

The Criminal Justice (Day Training Centre) (Guernsey) Law 1989

The Parole Review Committee (Guernsey) Law 1988

The Magistrates Court (Juvenile Cases) (Procedure) Rules 1985

The Juvenile Court (Guernsey) Law 1988

The Housing (Control of Occupation) (Amendment) (Guernsey) Law 1988

The Data Protection (Bailiwick of Guernsey) Law 1986

The Domestic Proceedings and Magistrates Court (Guernsey) Law 1987

The Protection of Children (Bailiwick of Guernsey) Law 1985

The Education (Amendment) (Guernsey) Law 1987

The Law Reform (Miscellaneous Provisions) (Guernsey) Law 1987

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*/ These documents are available for consultation by members of the Committee in the files of the Secretariat.

C. THE ISLE OF MAN GOVERNMENT

1. The international status of the Isle of Man has not been altered since the second report, submitted in 1984, although important changes have since been made in the structure of government in the Island, which are referred to in this report. The comments contained in part I to the Isle of Man's initial report remain valid.

Article 1

2. Since 1984, executive government has been reorganized on a ministerial basis. The Chief Minister, who is formally appointed by the Lieutenant Governor on the nomination of Tynwald, is assisted by nine other Ministers who are also nominated by Tynwald. These are responsible for the Treasury and for the Departments of Home Affairs, of Industry, of Agriculture, Fisheries and Forestry, of Health and Social Security, of Tourism and Transport, of Local Government and the Environment, of Education, and of Highways, Ports and Properties. There has been no change in the House of Keys or the Legislative Council.

Article 7

3. Section 134, Criminal Justice Act 1988, was extended to the Isle of Man by the Criminal Justice Act 1988 (Torture) (Isle of Man) Order 1989 on 13 July 1989, making statutory provision for the offence of torture.

Article 10

4. Paragraph 1. The functions of the Home Affairs Board have been transferred to the Department of Home Affairs. New prison rules were made in 1984 under the Prison Act 1965 and were amended in 1989.

5. Paragraph 2. Tromode House is now run as a community home and a new remand and detention centre has been built and recently opened in Douglas. Under the provisions of the Prison and Youth Custody Act 1986, a "youth custody wing" has been established, suitable for the detention of male persons under 21 years of age.

Article 23

6. The Matrimonial Proceedings Act 1986 has abolished the common law actions for enticement and harbouring and the right to claim damages for adultery. The law relating to dissolution and nullity has been kept in line with that of England and Wales.

Annex

Legislation referred to in the report */

The Prison Act 1965 - The Prison Rules 1984

The Prison Act 1965 - The Prison (Amendment) Rules 1989

Prison and Youth Custody Act 1986

Matrimonial Proceedings Act 1986

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*/ These documents are available for consultation in the files of the Secretariat.

Part III. SUPPLEMENTARY REPORT ON THE DEPENDENT TERRITORIES

Introduction

1. This supplementary report, accompanying the third periodic report of the United Kingdom under article 40, paragraph 1 (b), of the Covenant, provides information in respect of each dependent territory further to that given in the previous reports of the United Kingdom on the dependent territories (initial report: CCPR/C/1/Add.37 of 15 November 1978; second report: CCPR/C/32/Add.14 of 20 June 1988 and supplement updating that report: CCPR/C/32/Add.15 of 5 October 1988), and in response to questions raised during examination of those reports.

2. Ten dependent territories are covered in this supplementary report, as follows:

A. Bermuda
B. British Virgin Islands
C. Cayman Islands
D. Falkland Islands
E. Gibraltar
F. Hong Kong
G. Montserrat
H. Pitcairn
I. St. Helena
J. Turks and Caicos Islands

3. The reports on the dependent territories follow the same format but vary considerably in length and content. This reflects the many differences in the legal and administrative practices of the various territories, all of which have been closely consulted in the preparation of this report. Each territory has is own legislative assembly, which makes its own laws according to local circumstances, priorities and perceptions. One indicator of the diversity of the circumstances of these territories may be found in the different sizes of their populations, the latest statistics for which are as follows:

Bermuda	56,000
British Virgin Islands	12,000
Cayman Islands	22,000
Falkland Islands	1,916
Gibraltar	29,692
Hong Kong	5,736,100
Montserrat	12,500
Pitcairn	55
St. Helena	7,046
Turks and Caicos Islands	13,000

4. During the session of the Human Rights Committee to discuss the second report, the question of publicity for the Covenant emerged as a matter of particular concern to the Committee. In response to the concern expressed, the British Government has produced a booklet containing the texts of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and has arranged for copies of this booklet to be placed in libraries in the dependent territories.

A. BERMUDA

1. General

1. The civil and political rights recognized by the Covenant are protected in Bermuda by the Constitution of Bermuda 1968 and the Human Rights Act 1981.

2. The Constitution sets out the fundamental rights and freedoms of the individual and provides protection:

(a) Of the right to life;
(b) From inhuman treatment;
(c) From slavery and forced labour;
(d) From arbitrary arrest or detention;
(e) To secure protection of law;
(f) For privacy of home and other property;
(g) Of freedom of conscience;
(h) Of freedom of expression;
(i) Of freedom of assembly and association;
(j) Of freedom of movement;
(k) From discrimination on the grounds of race, etc.;
(l) From deprivation of property.

3. The Human Rights Act provides protection from unlawful discrimination in the areas of provision of goods, facilities and services, employment and accommodation, on the following grounds:

(a) Of race, place of origin, colour or ancestry;
(b) Of sex;
(c) Of marital status;
(d) Of not having been born in lawful wedlock;
(e) Of having or being likely to have a child whether born in lawful wedlock or not;
(f) Of religious beliefs or political opinion.

2. Information relating to articles in parts I, II and III of the Covenant

4. The following information is supplementary to that provided in the first and second reports of the United Kingdom on Bermuda and given by the United Kingdom delegation at the meeting of the Human Rights Committee which discussed these reports. Articles in relation to which no new legislative or administrative developments have occurred are not included in this report. Inclusion of particular points does not necessarily mean that the United Kingdom considers that they fall within the scope of particular articles of the Covenant.

Article 2

5. The Human Rights Amendment Act was enacted by the legislature in 1988. It extended the protection of the Human Rights Act 1981 specifically to all persons defined as "disabled persons".

Article 7

6. In December 1988, the United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is expected that this ratification will be extended to Bermuda by early 1990.

Article 17

7. At the meeting to discuss the United Kingdom's second report on its dependent territories, it was asked what kind of personal data could be stored in computers and who could hold such information (CCPR/C/SR.857, para. 31). Personal information obtained by the Government of Bermuda may be used only for the purposes set out in statutory provisions under which the information is obtained. This applies whether or not the information is stored in computers. There is no special law enacted in Bermuda dealing with computers and privacy of personal data but this subject is currently under study by the Government.

Article 21

8. At the same meeting, a question was asked about the discretionary powers of commissioners of police in the dependent territories in respect of conduct of public meetings (CCPR/C/SR.857, para. 64). In Bermuda, the Commissioner of Police conducts his duties and responsibilities in these matters by applying laws enacted by the Bermuda Parliament. The principal Acts in Bermuda law that govern public meetings are the Public Order Act, 1963; and the Summary Offences Act, 1926.

9. The following is a summary of the relevant parts of the Public Order Act, 1963:

Section 2. Prohibits disorderly behaviour at a public meeting;

Section 3. Creates the offences of threatening, abusive or insulting words, gestures or behaviour at any public meeting or in any public place with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be occasioned;

Section 4. Prohibits the most public processions without a permit granted by the Deputy Governor;

Section 9. Permits the police to re-route a procession under certain circumstances;

Section 10. A police officer may arrest, without a warrant, any person reasonably suspected by him of committing or having committed any offence against this Act.

10. Ultimate operational control of the police is vested in the Governor acting in accordance with the Constitution. There is also a Police Complaints Review Board in Bermuda established under the Police Act. This body provides for an independent assessor appointed by the Bar Council.

B. BRITISH VIRGIN ISLANDS

1. General

1. There is nothing to add further to paragraphs 1 to 10 of the initial report on the British Virgin Islands.

2. Information relating to articles in parts I, II and III of the Covenant

2. The following information is supplementary to that provided in the United Kingdom's first and second reports on the British Virgin Islands and given by the United Kingdom delegation at the meetings of the Human Rights Committee which discussed these reports. Articles in relation to which no new legislative or administrative developments have occurred are not included in this report. Inclusion of particular points does not necessarily mean that the United Kingdom considers that they fall within the scope of particular articles of the Covenant.

Article 7

3. In December 1988, the United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The ratification was extended to the British Virgin Islands.

Article 9

4. Further to the information given in the initial report, all persons arrested by the police are served with a document outlining their rights as prisoners, such as the reason for arrest, the availability of the use of the telephone and the right to contact a lawyer, relative or friend and to see a medical practitioner if the person arrested is injured or ill, etc.

Article 10

5. At the request of the British Government, H.M. Chief Inspector of Prisons, Judge Stephen Tumim, carried out an inspection of the prison in the British Virgin Islands in March 1989. He recommended that a site for a new prison should be selected without delay, and a new prison built. His report also covered training, management, staffing, physical security, welfare and rehabilitation of prisoners and other matters relevant to the safe custody and proper administration of all prisoners, whether remanded in custody or convicted. The various recommendations, including the building of a new prison, will be implemented as funds become available.

Article 17

6. At the meeting to discuss the United Kingdom's second report on its dependent territories, it was asked what kind of personal data could be stored on computers and who could hold such information (CCPR/C/SR.857, para. 31). Computers are only now gradually coming into general use in the British Virgin Islands and no legislation has been passed with respect to their use or to data protection in general. However, the Government recognizes the need for some policy and legislation in this area and attention will be given to it in the near future.

Article 21

7. At the same meeting, a question was asked about the discretionary powers of commissioners of police in the dependent territories in respect of the conduct of public meetings (CCPR/C/SR.857, para. 64). In the British Virgin Islands there is no obligation to give notice of large meetings and processions to the Commissioner of Police. The Commissioner of Police does not have the power to refuse to allow such meetings or processions, but he may apply to the Governor for an Order-in-Council prohibiting such processions in a specific area.

Article 23

8. Further to the information given in the initial report, the Matrimonial Causes (Amendment) Act 1986 was enacted in December 1986. It removes discrimination against women in matrimonial matters.

C. CAYMAN ISLANDS

1. General

1. The Constitution of the Cayman Islands is contained in the Cayman Islands (Constitution) Order 1972 (S.I. 1972 No. 1101), made by Order-in-Council under section 5 of the West Indies Act No. 1962, as subsequently amended by S.I. 1984 No. 126 and S.I. 1987 No. 2199.

2. The Order provides for the office of Governor, the Executive Council and the Legislative Assembly. It does not make detailed provision for the judiciary, which is regulated primarily by local legislation and operates wholly independently on the executive and the legislature. By virtue of section 6 of the Grand Court Law 1975, judges may be removed from office only for inability to discharge the functions of office or for misbehaviour, and only in accordance with directions given by the Secretary of State of H.M. Government.

3. The powers and duties of each can be outlined as follows:

(a) Governor. The Governor is the representative of the Crown and presides at meetings of the Executive Council. He is obliged to consult with Council except in the case of certain reserved matters, including defence, external affairs, internal security, the police and the appointment and terms of employment of civil servants. In any case where he is obliged to consult Council, the Governor must act in accordance with the advice given, unless he considers it inexpedient in the interests of public order, public faith or good government to do so (and in such cases only with the approval of the Secretary of State, unless the matter is urgent). The Governor is not obliged to consult the Executive Council in any case in which he considers that Her Majesty's Service would sustain material prejudice, that the matter is too unimportant or too urgent;

(b) Executive Council. The Council advises the Governor on the administration of the Islands. It is composed of four members elected from the elected representatives in the Legislative Assembly, each with a range of executive responsibilities allocated by the Governor, and three ex officio members (the Financial Secretary, the Attorney-General and the Administrative Secretary);

(c) Legislative Assembly. There are 12 elected representatives of 6 electoral districts in the Islands. Elections are held every 4 years on a secret ballot by adult franchise (18 and over). In addition, the 3 ex officio members of the Executive Council also serve as members of the Assembly. The Assembly's powers are to advise on and consent to laws "for peace, order and good government" of the Islands: in effect, and subject to what follows, it makes the law. Any member may introduce a bill on such a matter. Bills cannot become law without the assent of the Governor and he, by the Cayman Islands Royal Instructions 1972, cannot (except in cases of urgent necessity) assent to any bill "the provisions of which appear to him to be inconsistent with obligations imposed by treaty" without the prior instructions of Her Majesty through a Secretary of State. Any law assented to by the Governor may be disallowed by Her Majesty acting by a Secretary of State. The Governor presides at meetings of the Legislative Assembly with a casting (but not an

original) vote. There are provisions in the Constitution Order for the appointment of a Speaker to preside in place of the Governor, but a recent proposal to create the office of speaker failed to secure a majority in the Assembly;

(d) The judicial system. There are three levels of court: the summary court, the Grand Court and the Cayman Islands Court of Appeal. The summary court is presided over by one of two magistrates. It deals with civil disputes up to CI$ 2,000 and all but serious criminal cases. The juvenile court generally sits with three justices, including a woman. Appeals from the summary court lie to the Grand Court, which is presided over by the Chief Justice or by one of two puisne judges. It has both civil and criminal jurisdiction and administers the common law and law of equity of England, as well as locally enacted laws and applied laws. The Cayman Islands Court of Appeal was established by amendment to the Constitution Order in 1984 (S.I. No. 126), before which appeals had been heard by the Jamaican Court of Appeal. It sits when required to hear appeals from the Grand Court and at present is presided over by the Chief Justice of Jamaica. Appeals from the Cayman Islands Court of Appeal lie to the Judicial Committee of the Privy Council. A copy of a paper by Elizabeth W. Davies on the courts of the Cayman Islands has been submitted with this report (see appendix).

4. In addition, there are statutory bodies established under local legislation dealing with administrative matters. These include the Central Planning Authority (with responsibility for development control, including the determination of planning applications), from which appeal lies to an appeals tribunal, and the Caymanian Protection Board (with responsibility for the granting of Caymanian status, immigration and work permits). Appointment to such bodies is by the Governor in Council.

5. There are no fundamental rights and freedoms embodied in the Constitution Order. Instead, as in the United Kingdom, the basic norm is one of general freedom, with any limitation or restriction having to be specifically authorized by the law.

6. The Government has arranged for copies of the Covenant to be deposited in the Public Library and in all senior schools in the Cayman Islands. In addition, the times of hearings of the Human Rights Committee and reports of the Committee are made available to the local media.

2. Information relating to articles in parts I, II and III of the Covenant

7. The following information is supplementary to that provided in the United Kingdom's first and second reports on the Cayman Islands and given by the United Kingdom delegation at the meetings of the Human Rights Committee which discussed these reports. Articles in relation to which no new legislative or administrative developments have occurred are not included in this report. Inclusion of particular points does not necessarily mean that the United Kingdom considers that they fall within the scope of particular articles of the Covenant.

Article 1

8. Elections are held every four years, at which any candidate may propose changes to the relationship with the United Kingdom as part of his manifesto. Additionally, anyone may advocate such changes through the media or any other forum, and this includes elected Members in the Legislative Assembly. The last election (in November 1988) revealed no evidence of any wish for change among the electorate, nor did any candidate suggest such changes. H.M. Government has undertaken and will continue to respect and follow the views of the people, should these at any time change.

9. The next census will be held in October 1989. As in 1979, however, it will not inquire into the racial origin of the population. This is by the express decision of the Executive Council, based on its assessment of community tradition and opinion. At the end of 1988, the resident population was estimated at 25,900. This was based on a demographic survey carried out by the Statistics Office of the Cayman Islands Government. A copy of the survey has been submitted with this report (see appendix).

10. Local legislation can be challenged in the courts as being either procedurally or substantively ultra vires the 1972 Constitution Order or (in the case of regulations or orders) the enabling law. Additionally, any law may be disallowed by Her Majesty acting by a Secretary of State if it is, inter alia, inconsistent with any treaty obligation.

Article 2

11. Cayman continues to be a racially harmonious and fully integrated society. Section 72 of the Labour Law 1987 outlaws discrimination in employment on the grounds of race, colour, creed, sex, age or political beliefs. Breach of this section would give opportunity for both civil and criminal redress through the courts. The Director of Labour has to date not received any complaint on the ground of racial or sexual discrimination in employment. (N.B. The Caymanian Protection Law 1984 discriminates in favour of Caymanians and those with Caymanian status in employment, but this is based on nationality, not on race.)

Article 3

12. Men and women enjoy equal rights in the Islands. In particular, there is no discrimination against women in immigration or in citizenship rights. Only one distinction is made between men and women in the Caymanian Protection Law 1984. One of the matters that the Caymanian Protection Board must take into account when deciding to grant status is that the applicant would live in the Islands. The law expressly provides, however, that that should not disqualify women who live apart from their husbands and whose domicile is, by reason of their marital status, outside the Board's control.

Article 4

13. The Emergency Powers Law (Revised) 1978 empowers the Governor by proclamation to declare a state of emergency arising from natural causes such as a hurricane or an outbreak of infectious disease which is "of such a nature and on so extensive a scale as to be likely to endanger the public safety and to deprive the community or any substantial portion of the community of

supplies or services essential to life". Such a proclamation lasts only one month, unless renewed. The Legislative Assembly must be called within 10 days. In a state of emergency, the Governor has wide powers by regulation to secure the essentials of life, to secure public safety and to maintain good order, but he cannot alter the criminal law or impose military or industrial conscription. Regulations have to be laid before the Legislative Assembly and do not take effect unless confirmed by the Assembly within seven days.

14. Only one such state of emergency has had to be declared in recent years. That was in September 1988 in response to Hurricane Gilbert. Although regulations were prepared, it was not necessary to bring them into operation.

15. There are similar powers under the Emergency (Public Security) Law (Revised) 1978, where the Crown is engaged in war or war is imminent. In this case there is no requirement for approval by the Legislative Assembly of such regulations.

Article 6

16. The abolition of the death penalty was last debated in the Legislative Assembly in 1977, when Members voted to retain it. Under the Penal Code 1975, only those convicted of piracy, treason or murder may be sentenced to death. By section 13 of the Royal Instructions 1972, the Governor has power to grant pardon or reprieve in capital cases.

Article 7

17. Apart from recourse to law, complaints against the police may be made to the Commissioner of Police. He will conduct an inquiry and take whatever action, including disciplinary proceedings, which may be necessary.

18. Under the Prison Rules 1981, solitary confinement of prisoners may be authorized only by a principal prison officer in appropriate disciplinary cases for a maximum of three days, subject to the approval of the chief medical officer. The prisoner has a right of appeal against such an award to the Director of Prisons.

19. On 8 December 1988, the United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This ratification was extended to the Cayman Islands.

Article 10

20. The proposed prison that was mentioned in the first report was completed in 1981 at Northward and provides accommodation for all prisoners in the Islands. Prisoners of Jamaican origin, however, are occasionally repatriated to serve their sentences in Jamaica. There are at present 170 prisoners, of whom 22 are women, and 17 are young offenders under 21. Women prisoners are strictly segregated from men, under the direct supervision of female officers. Accommodation for convicted adult prisoners and those on remand are each separate but, because of the size of the prison and staff resources, there is inevitably mixing during the day, but only at mealtimes and during outside social and recreational activities.

21. Male prisoners are given work in vehicle workshops, in horticulture and in animal husbandry, in addition to routine work within the prison. Women's work includes sewing, dressmaking and growing vegetables. Remand prisoners are given the opportunity to train or acquire similar skills, but without any compulsion to take part. Young offenders are offered the opportunity for studying and for participation in self-help anti-drug groups.

22. The provisions of the Imprisonment Law (now the Prisons Law) mentioned in the first report, allowing weekend leave and sentences to be served at weekends or extramurally, have been repealed. The Director of Prisons was instead empowered to grant discretionary day release to prisoners for training, and to allow them up to five days predischarge leave.

23. There are no facilities on the Islands for long-term patients in hospital or mental institutions. Such patients would be placed in accommodation in either the United States or Jamaica.

Article 13

24. By virtue of the Caymanian Protection Law, no person with Caymanian status may be deported. Such status may, however, be acquired by grant of the Caymanian Protection Board as well as by birth. If, within seven years of being granted status, a person is convicted by a court of a criminal offence which, in the court's opinion, is a grave offence or was facilitated by the offender's Caymanian status, the court may recommend that the status be forfeited. If the recommendation is accepted by the Caymanian Protection Board, the person concerned would lose the protection from deportation which his status formerly afforded him. The Board also has the power to grant non-Caymanians the right to remain permanently within the Islands. Deportation orders cannot be made against such persons, unless they have lost their right to permanent residence after being sentenced to a term of at least one year's imprisonment or as a result of one of the other specified circumstances set out in the Caymanian Protection Law.

25. Deportation orders may be made only by the Governor in accordance with the Caymanian Protection Law 1984. The law prescribes both the classes of persons against whom an order may be made and the detailed procedure that must be followed. Proceedings may be instituted only by or with the sanction of the Attorney-General. With three exceptions, an order can be made only after the person concerned has been given the opportunity of a hearing in a court of law before a magistrate, and the Governor, after considering the magistrate's report, is satisfied that an order may fitly be made. The exceptions, where a special court hearing is not necessary, are where the person concerned has already been convicted in the courts: (a) of an offence punishable with imprisonment and the court has recommended that a deportation order should be made; (b) of an offence for which he or she has been sentenced for a term of not less than six months' imprisonment; or (c) of the offence of remaining or residing illegally in the Islands. All deportation orders made must be reported by the Governor to the Secretary of State for Foreign and Commonwealth Affairs.

Article 14

26. Under the Juveniles Law 1975, a "juvenile" is defined as a person under the age of 17. The law also provides that it shall be conclusively presumed that no child under the age of 8 can be guilty of an offence. There is a statutory responsibility on every court dealing with a juvenile "to have regard to the welfare of the juvenile and ... if it deems it necessary, take steps for removing the juvenile from undesirable surroundings and for securing that proper provisions be made for his or her education and training".

27. An interpreter will be provided for anyone who needs one in the criminal courts. In practice the only need has been for Spanish interpreters.

28. A potential problem with jury trials in a small country such as the Cayman Islands is that jury members may know or know of the defendant. In some cases, this could be to the defendant's prejudice. In 1986, the Criminal Procedure (Amendment) Code was accordingly passed by which a person accused of an offence triable by jury could elect to be tried by a judge alone instead of with a jury.

Article 17

29. At the meeting to discuss the United Kingdom's second report on its dependent territories, it was asked what kind of personal data could be stored on computer and who could hold such information (CCPR/C/SR.857, para. 31). There is no data protection law as such. All the Government's computer records are on a central system. This covers:

(a) A register of non-Caymanian nationals with dates of entering and leaving the Islands;

(b) Records of government employees;

(c) Driving and vehicle licences;

(d) The electoral role, as compiled every four years (this is not kept on computer between elections);

(e) Records of births and deaths;

(f) Records of medical fees;

(g) Records of the Land Registry.

The last is open to public inspection. The remainder is confidential, access being permitted to specifically authorized individuals only.

Article 20

30. In the second report on the Cayman Islands, there was a regrettable omission of certain words (underlined below) from the definition that was given of "seditious intent". The definition is in section 47 of the Penal Code 1975. This provides that an act, speech or publication is not seditious by reason only that it intends:

(a) To show that the Crown has been misled or mistaken in any of its measures; or

(b) To point out errors or defects in the Government or Constitution of the Islands; or

(c) To persuade the inhabitants of the Islands to attempt to procure by lawful means the alteration of any matters in the Islands as by law established; or

(d) To point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will or enmity between different classes of the population.

Article 21

31. At the meeting to discuss the United Kingdom's second report on its dependent territories, a question was asked about the discretionary powers of commissioners of police in the dependent territories in respect of conduct of public meetings (CCPR/C/SR.857, para. 64). There is freedom of assembly on the Islands. The only controls are in the Public Order Law 1973, which makes it an offence at a public meeting for anyone to have an offensive weapon or to be abusive or to act in such a disorderly way as to be likely to prevent or obstruct the transaction of business at the meeting. The police have powers to arrest persons who contravene this law. Public processions require a permit from the Commissioner of Police under the Public Order Law 1973. The Commissioner can refuse to issue a permit, however, only if he has reasonable grounds for apprehending that the procession may give rise to public disorder. If he refuses permission, or grants it subject to conditions or directions, his decision is subject to appeal to the Governor.

D. FALKLAND ISLANDS

1. General

1. There is nothing to add further to paragraphs 1 to 3 of the second periodic report on the Falkland Islands.

2. Information relating to articles in parts I, II and III of the Covenant

2. The following information is supplementary to that provided in the first and second reports of the United Kingdom on the Falkland Islands and given by the United Kingdom delegation at the meetings of the Human Rights Committee which discussed these reports. Articles in relation to which no new legislative or administrative developments have occurred are not included in this report. Inclusion of particular points does not necessarily mean that the United Kingdom considers that they fall within the scope of particular articles of the Covenant.

Article 4

3. At the meeting to discuss the United Kingdom's second report on its dependent territories, a question was asked relating to article 4 (CCPR/C/SR.856, para. 63). There is nothing to add to the answers given by Mr. Fearn (CCPR/C/SR.856, paras. 64 and 67).

Article 7

4. Further to paragraph 14 of the second report (CCPR/C/32/Add.14, annex D), the Crimes Ordinance 1989 of the Falkland Islands creates a specific offence of torture in terms reflecting the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. On 8 December 1988, the United Kingdom ratified that Convention. The ratification was extended to the Falkland Islands.

Article 10

5. Further to paragraph 17 of the second report (ibid.), it may be added that section 22 of the Criminal Justice Ordinance 1989 prohibits a sentence of imprisonment being passed upon a person under the age of 21 years and provides for other forms of custodial sentence to be imposed where a sentence of imprisonment might otherwise have been appropriate.

Article 13

6. The Immigration Ordinance 1987, referred to in paragraph 20 of the second report (ibid.), came into force on 1 January 1989.

Article 17

7. At the meeting to discuss the United Kingdom's second report on its dependent territories, it was asked what kind of personal data could be stored on computers and who could hold such information (CCPR/C/SR.857, para. 31). So far as concerns the Falkland Islands, very little in the way of personal data is currently stored on computers. So far as is known, the only such

information which is at present stored on computers in the Falkland Islands is certain data relating to immigration and criminal records. Administrative procedures in operation prevent such data being accessible by unauthorized persons. Equally, the administrative procedures in force allow any person to whom such information relates to have access to any data held in relation to him and to correct any data which might prove to be incorrect. The local authorities are cognizant of the fact that their obligations under the Covenant extend to records kept manually as well as to those maintained upon computer. They have in mind, at an appropriate opportunity, to enact legislation along the lines of the Data Protection Act 1984 and Access to Personal Files Act 1987 of the United Kingdom.

Article 20

8. Specific legislation has been enacted (the Crimes Ordinance 1989) making certain actions intended to stir up racial hatred or likely to stir up racial hatred criminal offences.

Article 21

9. At the meeting to discuss the United Kingdom's second report on its dependent territories, a question was asked about the discretionary powers of commissioners of police in the dependent territories in respect of conduct of public meetings (CCPR/C/SR.857, para. 64). The powers of the Chief Police Officer in relation to conduct of public meetings in the Falkland Islands are identical with those in England, as the relevant provisions of the Public Order Act 1986 were adopted by the Falkland Islands Crimes Ordinance 1989. The Chief Police Officer is, of course, subject to the jurisdiction of the courts in the exercise of those powers, and the Constitution contains safeguards against their abuse.

E. GIBRALTAR

1. General

1. The way in which the provisions of the International Covenant on Civil and Political Rights are given effect in Gibraltar remains as stated in the initial report.

2. Information relating to articles in parts I, II and III of the Covenant

2. The following information is supplementary to that provided in the first and second reports of the United Kingdom on Gibraltar and given by the United Kingdom delegation at the meetings of the Human Rights Committee which discussed these reports. Articles in relation to which no new legislative or administrative developments have occurred are not included in this report. Inclusion of particular points does not necessarily mean that the United Kingdom considers that they fall within the scope of particular articles of the Covenant.

Article 3

3. At the time of the second periodic report, an ordinance to render unlawful certain kinds of sex discrimination and discrimination on the grounds of marriage was before the House of Assembly for consideration. The proposals contained therein were intended to enable Gibraltar to implement principles of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. The bill was based on part of the United Kingdom Sex Discrimination Act 1975.

4. The bill was not in fact proceeded with and, as a result of further deliberations, it was decided to amend and add to the existing employment legislation. An ordinance to that effect was enacted in 1989 (the Employment (Amendment) Ordinance 1989).

Article 7

5. On 8 December 1988, the United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The ratification was extended to Gibraltar.

Article 17

6. At the meeting to discuss the United Kingdom's second report on its dependent territories, it was asked what kind of personal data could be stored on computers and who could hold such information (CCPR/C/SR.857, para. 31). At present, there is no legislation in Gibraltar relating to data protection and there is none under consideration at this time. The reason for this is that the use of computers in Gibraltar for storing information about individuals is still very much in its infancy. The Gibraltar Government has it in mind tc computerize some of its records, e.g. PAYE (Pay-as-you-earn) and Housing, but as yet steps have not been taken to implement these proposals. If and when the use of computers becomes widespread, the appropriate legislation to protect the rights of individuals would be introduced.

Article 21

7. At the same meeting, a question was asked about the discretionary powers of commissioners of police in the dependent territories in respect of conduct of public meetings (CCPR/C/SR.857, para. 64). Restrictions on public meetings and the regulation and prohibition of processions is dealt with under the Criminal Offences Ordinance, sections 31-35. The Commissioner of Police, with the sanction of the Governor, may issue a notice forbidding any public meeting from assembling in any road or public place. The Governor may in writing authorize the Commissioner or any police officer to go to and remain as long as necessary in any premises where a public meeting is taking place or is about to take place, entering if necessary by force.

8. In relation to processions, the Commissioner may impose upon the organizers or participants such conditions as appear to him to be necessary for the preservation of public order; and if at any time the Commissioner considers that, by reason of particular circumstances existing in Gibraltar, the above powers are not sufficient, he can apply to the Governor for any order prohibiting the holding of all public processions or any class of public procession for up to three months.

9. Under the Traffic Ordinance, section 84, the Commissioner has power in certain circumstances temporarily to prohibit or restrict traffic on roads or in public places where any public procession rejoicing, parade, illumination, entertainment, etc., is taking place.

10. Freedom of peaceful assembly is one of the oldest common law rights and there are no restrictions on the exercise of this right other than those prescribed by law (and outlined above) in the interests of the community as a whole and for the protection of the rights and freedoms of others. Common law, for example, forbids assemblies convened with the express object of effecting a breach of the peace.

11. The actions of the Commissioner are subject to judicial review in the Supreme Court of Gibraltar.

12. In relation to police disciplinary matters in general, new disciplinary regulations have been drafted and are at present being considered by the Governor with a view to implementation in the immediate future.

F. HONG KONG

1. General

1. The first and second reports on Hong Kong (CCPR/C/1/Add.37 and CCPR/C/32/Add.14 and 15) set out the general framework within which the rights recognized by the International Covenant on Civil and Political Rights are currently protected in Hong Kong.

2. At the meetings of the Human Rights Committee which discussed the second report in November 1988, the Committee expressed a special interest in knowing how the protection of human rights would be provided for in Hong Kong after the reversion of the territory to China in 1997. Given the Committee's concern, and the growing importance of the issue to the Hong Kong people, it may be useful in this, the third report, to supplement the information already provided with a general explanation of the safeguards now in place and those being prepared for the future protection of human rights in Hong Kong.

3. The Sino-British Joint Declaration on the Question of Hong Kong (the Joint Declaration) made by the British Government and the Government of the People's Republic of China in 1984 contains the following provision on basic rights (para. 3 (5)):

> "Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong Special Administrative Region. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment will be protected by law."

4. This provision is further elaborated in various sections of annex I to the Joint Declaration, and in particular Section XIII, the full text of which is attached (see annex below). Inter alia, it stipulates that:

> "The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force."

5. The provisions of the Joint Declaration will be reflected and stipulated in the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, and they will remain unchanged for 50 years. While the preparation of the Basic Law is a matter for the Chinese Government, the British Government has the right and responsibility to satisfy itself that the Basic Law faithfully reflects the provisions of the Joint Declaration.

6. The Basic Law Drafting Committee is holding consultations with the people of Hong Kong, through the medium of the Basic Law Consultative Committee, to seek views on the content of the Basic Law. A consultation exercise was carried out following the release of the first draft of the Basic Law in April 1988, and the views then expressed were taken into account to a large extent in preparing the second draft, which was released in February 1989 for another round of consultation. Before the promulgation of the Basic Law by the National People's Congress of China in spring 1990, the second draft will undergo further revision in the light of comments on it.

7. A major concern in Hong Kong is the protection of human rights after 1997, in particular the continued application and implementation of the two International Covenants on Human Rights in the Hong Kong Special Administrative Region as provided for in the Joint Declaration. Under section 4 of annex II to the Joint Declaration, the means by which the British and Chinese Governments will ensure the continued application of the international rights and obligations affecting Hong Kong is a matter for consideration in the Sino-British Joint Liaison Group and its sub-group on international rights and obligations. It is essentially a question of how best the People's Republic of China can succeed in 1997 to the treaty rights and obligations which the United Kingdom has at present in respect of Hong Kong, under the Covenants.

8. In addition, article 39 of the second draft of the Basic Law states:

> "The provisions of the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights ... as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.
>
> "The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this article."

9. Section XIII of annex I to the Joint Declaration also specifies inter alia: "The Hong Kong Special Administrative Region Government shall maintain the rights and freedoms as provided for by the laws previously in force in Hong Kong, including freedom of the person, of speech, of the press, of assembly, of association, to form and join trade unions, of correspondence, of travel, of movement, of strike, of demonstration, of choice of occupation, of academic research, of belief, inviolability of the home, the freedom to marry and the right to raise a family freely." Chapter III of the second draft of the Basic Law contains relevant provisions.

10. The question of a human rights ordinance for Hong Kong is the subject of intense discussion both in public and within the Hong Kong Government. The question was first formally raised at the end of 1987 and beginning of 1988 when, partly in relation to issues being discussed in the drafting of the Basic Law and partly in response to calls for human rights legislation in Hong Kong, the Attorney General of Hong Kong convened a series of meetings with members of the legal profession drawn from both the public and private sectors and from academic institutions. The aim of the meeting was to provide a forum for members to discuss the subject of human rights and the form human rights legislation might take were it decided to enact such legislation.

11. Following these meetings, members of the Attorney General's chambers began a study of how article 39 of the draft Basic Law, if eventually promulgated, could be implemented in Hong Kong. The current mood in Hong Kong has strengthened calls for further measures to protect human rights to be introduced in Hong Kong before 1997.

12. The Governor of Hong Kong announced in his annual speech at the opening session of the Legislative Council on 11 October 1989 that it was the intention of the Hong Kong Administration to give effect in local law to the

relevant provisions of the Covenant. A Bill of Rights was to be prepared on this basis. Anyone who believes that his civil or political rights, as defined in the Covenant, have been violated, will be able to seek redress in the courts. A draft bill will be published for public consultation by the end of 1989. The current plan is to introduce draft legislation into the Legislative Council by July 1990. Within this timescale, there will not be time for a comprehensive review of all existing Hong Kong laws to remove any areas of doubt about their full compatibility with the Bill of Rights. To avoid any unnecessary uncertainties, the draft bill will provide for a limited period after its enactment during which existing laws cannot be challenged against the standard of the new bill.

Commissioner for Administrative Complaints

13. In July 1988, legislation was enacted to provide for the appointment of a Commissioner for Administrative Complaints. The first Commissioner was appointed and his office began work early in 1989. The office is entirely independent of the Executive. The function of the Commissioner for Administrative Complaints is to investigate complaints of maladministration. The establishment of the office is meant to supplement and strengthen the existing channels for the redress of grievances and not to replace any of them. The Commissioner's jurisdiction does not extend to investigating complaints against the Independent Commission against Corruption (ICAC) or the Police Complaints Committee, since both these bodies have independently monitored redress systems. But the Commissioner is an ex officio member of the Police Complaints Committee and the ICAC Complaints Committee and so can lend his expertise to those monitoring organizations.

14. Primary responsibility for protecting the individual against wrongful acts of the executive rests with the legislature and the courts in Hong Kong. To retain the role of the Legislative Council as the main channel for public complaints, members of the public are to make their complaints of maladministration through a member of the Council who will then refer the grievance, where appropriate, to the Commissioner. The Commissioner is required to inform the complainant and the Legislative Council member by whom the complaint was referred of the result of his investigation in each case. This provides a useful mechanism for members of the Council to monitor closely the work of the Commissioner.

15. After his investigation of a complaint, the Commissioner is required by law to report his opinion and his reasons, together with a statement of any remedy and recommendation that is considered necessary, to the head of department affected. When the report to a head of department is not, in the opinion of the Commissioner, adequately acted upon, the Commissioner may submit his report and recommendations, together with such further observations as he thinks fit to make, to the Governor. In particular where the Commissioner is of the opinion that a serious irregularity or injustice has taken place, he may make a report stating his opinion and his reasons to the Governor; such a report is bound by law to be laid before the Legislative Council.

2. Information relating to articles in parts I, II and III of the Covenant

16. The following information is supplementary to that provided in the United Kingdom's first and second reports on Hong Kong, and given by the United Kingdom delegation at the meetings of the Human Rights Committee which discussed these reports. Articles in relation to which no new legislative or administrative developments have occurred since August 1988 are not included in this report. Inclusion of particular points does not necessarily mean that the United Kingdom considers that they fall within the scope of particular articles of the Covenant.

Article 1

17. The first and second reports and the supplement thereto set out under article 25 the present political structure and system of consultation in Hong Kong, and the steps so far taken in the development towards more representative government. Further detailed information on this question was provided by the United Kingdom delegation during the Human Rights Committee meetings in November 1988 (see CCPR/C/SR.856, paras. 16-55).

18. The Chinese Government through the Basic Law Consultative Committee is currently consulting the Hong Kong people on their views on the pace of development of representative government after 1997, as it is to be provided for in the Basic Law. The views of Hong Kong people on this matter are of crucial importance. A number of models for the future composition of the Legislative Council have been put forward and have stimulated a great deal of debate in the community.

19. The first elections to the Legislative Council which will include a directly elected element are to be held in 1991. The Hong Kong Administration has always believed that political development should be based on the widest possible support in the community and would wish to respond positively, when it takes final decisions on the composition of the Legislative Council in 1991, to a broadly held Hong Kong view which emerges out of the debate in the community. Such a view would also help the drafters of the Basic Law to carry out the important task of formulating the structure of Hong Kong's political system in and after 1997.

Article 2

20. At present the Covenant is implemented in Hong Kong through a combination of legislation, common law and administrative rules. This system is not static but is constantly evolving through new legislation, developments in common law and equity and refinement of administrative practices. Legislation and rules are kept under constant review so that any remaining inadequacies may be exposed and remedied, and positive improvements made.

21. In the context of the preparation of a human rights ordinance, the Hong Kong Government is now carrying out a full review of legislation with the aim of ensuring that current legislation would be consistent with such an ordinance if it were introduced. At the same time, the Law Reform Commission is reviewing a number of areas which have a bearing on human rights issues, for example the police regulations on stop and search, and the loitering law. The state of progress of the Commission's work on these various issues will be described under the relevant articles.

22. During the meeting of the Human Rights Committee to discuss the second report, the question of publicity for the Covenants emerged as a matter of particular concern to the Committee. In response to the concern expressed, the Hong Kong section of the second report was tabled in the Legislative Council of Hong Kong immediately after the meeting, and placed in public libraries for the information of members of the public. The Hong Kong Administration also made plans for further action on publicity. The first phase was the publication and distribution to schools and public libraries of copies of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, in English and Chinese, and of fact sheets containing information on human rights based on United Nations materials. This work was completed at the end of June 1989.

23. A Committee on the Promotion of Civic Education was set up in May 1986 to promote awareness of the structure of government and constitutional matters in Hong Kong, and to enhance the public's concern with and involvement in community affairs. The Committee's work is aimed, inter alia, at enabling the public to understand and uphold civic rights and responsibilities as well as the concept of freedom, democracy, the rule of law and social justice. The Administration plans to co-operate with the Committee on a publicity programme, including distribution of publicity materials on the two Covenants as well as seminars and exhibitions.

24. A Committee on Promoting Legal Awareness has also been formed by the Law Society together with representatives of the Bar Association and other lawyers. The Hong Kong Administration will be making suggestions to the Committee on ways to raise the public's awareness of their civil rights and the contents of the Covenants.

25. In this context, it is noted that some concern has been expressed about the effect of Education Regulation 92 which relates to the syllabus and timetable of schools and the use of documents by schools. The regulation provides that no instruction may be given by any school except in accordance with a syllabus approved by the Director of Education. This provision does not in fact restrict the teaching of civic education in schools, nor prevent discussion in schools of the two International Covenants. Nevertheless, action is in hand to amend this and other education regulations, in order to clear up the misapprehension that they could inhibit civic education. This exercise is expected to be completed within the next few months.

26. The Hong Kong Administration in consultation with the British Government has been considering the application to Hong Kong of the United Nations Convention on the Elimination of All Forms of Discrimination against Women. As part of this consideration, existing policies and legislation relevant to the question of equality between the sexes are being reviewed.

27. A draft bill was passed by the Legislative Council in July 1989 which, inter alia, altered the basis of taxing the salaries of married couples from aggregation to separate taxation. The new system will come into operation as from 1 April 1990. By means of this bill, Hong Kong taxation legislation will better comply with the spirit of the Human Rights Covenants.

Article 4

28. A general description of the powers of the Governor in Council under the Emergency Regulations Ordinance was given in paragraphs 8 and 124 of the second periodic report of the United Kingdom on its dependent territories (CCPR/C/32/Add.14, annex F). While there are no defined criteria for deciding when a state of emergency should be declared, the Governor in Council would consider declaring a state of emergency only if there were either an internal threat or an external one or a combination of the two that might disrupt the essential functions of the territory.

29. As previously explained, no existing legislation in Hong Kong would allow derogation from articles 6, 7, 8, 11, 15, 16 or 18 of the Covenant. Nor would the Administration of Hong Kong contemplate introducing such legislation at any time. At present, however, there is no provision in Hong Kong law to prevent introduction of emergency legislation which would override existing ordinances or regulations. Because of this, in the context of consideration of a local bill of rights, thought is being given to the inclusion of a clause that would explicitly preclude the introduction of any legislation that would derogate from the International Covenants.

30. In connection with the consideration of the second report, the Human Rights Committee asked for examples of subsidiary legislation regulating the exercise of the powers of the Governor in Council under the Emergency Regulations Ordinance. The relevant pieces of subsidiary legislation are as follows:

(a) Emergency (Deportation and Detention) Regulations

These provide for individuals subject to deportation or detention orders to be heard before a tribunal, and lay down the arrangements to be made in the event of imprisonment or deportation of an offender;

(b) Emergency (Deportation and Detention) (Advisory Tribunal) Rules

These establish the types of information and evidence which may be considered by a tribunal;

(c) Emergency (Deportation and Detention) (Forms) Order

This specifies the layout and content of warrants for both initial and further detention;

(d) Emergency (Principal) Regulations

These specify the procedures to be followed in particular areas of concern when the Emergency Regulations Ordinance has been brought into effect. The areas of concern are as follows:

(i) Censorship and control of publications and means of communication;

(ii) Arrest, detention, exclusion and deportation;

(iii) Control of harbours, ports and territorial waters of the territory and movements of vessels and aircraft;

(iv) Transport;

(v) Possession or control of property, undertaking or employment;

(vi) Miscellaneous provisions;

(vii) Special offences and penalties;

(e) Emergency (Requisition) Regulations

These provide for the requisitioning of land other than property;

(f) Appointment of Places of Detention (Consolidation) Notice

This appoints certain sites, buildings and prisons as places of detention for the purposes of the Emergency (Deportation and Detention) Regulations.

Article 6

31. No death sentence has been carried out in Hong Kong since November 1966. Instead, convicted murders have had their death sentences commuted, usually to life imprisonment, occasionally to determinate sentences of 20 years or more. The Administration regularly reviews the question whether the death penalty, although it has not been carried out for many years, should none the less be retained on the statute books in Hong Kong. So far the response of the majority of the community has been strongly in favour of retention. This being so, the Administration has no plan to abolish the death penalty at present.

32. As to the right of commutation after 1997, article 48, paragraph 12, of the draft Basic Law provides the Chief Executive with the power to pardon persons convicted of criminal offences or to commute their penalties. Article 56, paragraph 2, requires the Chief Executive to consult the Executive Council before making important decisions. The procedures for making decisions on whether or not to commute as laid down in the draft Basic Law therefore closely mirror the current situation.

Article 7

33. A review of the use of judicial corporal punishment in Hong Kong has now been completed. The review took into account a public opinion survey on the issue, a review of alternative punishments and Hong Kong's international obligations. It recommended that judicial corporal punishment should be abolished. This recommendation was endorsed by the Fight Crimes Committee and the Executive Council. The Hong Kong Administration is now taking steps to repeal all legislation giving the courts power to give sentences of judicial corporal punishment.

34. In December 1988, the United Kingdom ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Hong Kong Government announced at that time that the Convention would be applied to Hong Kong once the necessary legislation was in place. The drafting of this new legislation is now at an advanced stage, and the Hong Kong Government aims to be in a position to have the Convention applied to Hong Kong by early 1990.

Article 9

35. The laws and regulations covering powers of arrest and detention in Hong Kong were described in full in the second report, paragraphs 25-44 (CCPR/C.32/Add.14, annex). The powers of stop, search, seizure, arrest and detention are currently under review by the Law Reform Commission. Its report is expected in 1990. The law on loitering is also the subject of review by the Law Reform Commission, and its report on this should be ready by the end of 1989.

36. In the discussion of the United Kingdom's second report, a question was raised in connection with article 14 concerning preventive detention in Hong Kong, to which an interim reply was given (see CCPR/C/SR.857, paras. 11 and 12). Further information was promised. As stated by the United Kingdom representative, there is no such practice as preventive detention in Hong Kong. All persons arrested by the police are to be released, discharged on bail or brought before a magistrate as soon as practicable and not later than 48 hours after their arrest. In special cases, where within 48 hours of a person's apprehension a warrant for his arrest and detention under any law relating to deportation is applied for, the person may be detained for a period not exceeding 72 hours from the time of such apprehension, to allow time for the application to be processed.

37. In 1988, a total of 64,218 persons were arrested by the police for a criminal offence, of whom 22,624, i.e. 35.2 per cent were released without charge. The great majority of the released persons had been detained for only a few hours, as was necessary for questioning.

38. In 1988, a total of 26 complaints were received alleging wrongful arrest. All these complaints were investigated by the Complaints Against the Police Office (CAPO), and the investigations were monitored by the Police Complaints Committee. The investigations have been concluded and two cases were substantiated.

39. Under section 26 of the Immigration Ordinance, cap. 115, any member of the Immigration Service of or above the rank of Chief Immigration Officer may detain a person for inquiry for not more than 48 hours, or for not more than a further five days under the authority of an officer of or above the rank of Principal Immigration Officer. The power conferred on the immigration officers is specific and can be exercised only in the circumstances stipulated in the same section of the Ordinance, that is:

(a) That inquiry for the purposes of the Ordinance, other than the provisions relating to deportation, is necessary in the case of any person; and

(b) That such person may abscond if he is not so detained.

The fact that the power of detention may be authorized only by high-ranking officers is designed to prevent abuse of such power. The right of redress by way of habeas corpus proceedings by the detainees also provides protection against possible abuse of power by the authorities. The power of detention is given to the immigration authorities only in order to enable the machinery of inquiries to be carried out, and this power is limited to the minimum period which is reasonably necessary for that purpose.

40. Immigration statistics show that in 1988 a total of 8,981 persons were detained, 4,919 prosecuted and 4,062 not prosecuted. These figures should be viewed in the context of a total of 20,988 illegal immigrants arrested in 1988, and some 60,000,000 passengers (in and out) cleared by the Immigration Department during the same period.

41. Under section 17A of the Customs and Excise Service Ordinance, cap. 342, a member of the Service may, without warrant, stop and search and arrest any person whom he may reasonably suspect of having committed an offence against an Ordinance specified in the Second Schedule. Like other law enforcement agencies in Hong Kong, customs officers are legally prohibited from detaining a person for inquiry for more than 48 hours from the time he is arrested without his being charged and brought before a magistrate. This prohibition is stipulated in section 17C (2) of the same Ordinance. As the law now stands, the right of redress against possible abuse by customs officers can be exercised by way of habeas corpus by the detainees.

42. During 1988, a total of 5,712 persons were arrested by customs officials for suspected offences under the various ordinances specified in the Second Schedule of cap. 342. Of these, 1,178, i.e. 20.6 per cent, were released without charge. The great majority of released persons had been detained for no more than a few hours, as was necessary in the normal course of questioning. In the whole of 1988, no complaint regarding unwarranted arrest was received by the Department.

Paragraph 1

43. The situation of Vietnamese refugees in Hong Kong was given detailed treatment in the second report, paragraphs 26-29 (CCPR/C.32/Add.14, annex F), supplemented by the update to the second report, paragraphs 4-5 (CCPR/C/32/Add.15, annex F). Since the fall of Saigon in 1975, some 170,000 Vietnamese boat people have arrived in Hong Kong, of whom 115,000 have so far been resettled in other countries. The current boat people population in Hong Kong is now over 55,000, of whom about 13,300 are refugees. The remainder either await screening or have been screened out as non-refugees.

44. Screening to determine refugee status is based on internationally accepted criteria, and is carried out with the close involvement of UNHCR. An independent refugee status review board examines all appeals against the initial status determination and its decision is final. Those who qualify as refugees remain in Hong Kong to await resettlement. Since the introduction of a screening policy on 16 June 1988, refugee centres have undergone a gradual liberalization programme, allowing the refugees to leave the centres to take advantage of education, employment and recreational opportunities which will enhance their resettlement prospects. Those who are determined not to be refugees are provided with food and shelter while suitable arrangements are made for their return to Viet Nam. Other places of first asylum have adopted

similar screening measures as part of a Comprehensive Plan of Action endorsed at the International Conference on Indo-Chinese refugees held in Geneva in June this year. At the Geneva conference, the international community agreed that those boat people who met the criteria for refugee status should be resettled overseas. Resettlement places in the West were pledged for all refugees. But it was also agreed that all those who were not refugees should return to their country of origin, as they had no prospect of resettlement in the West. The British and Hong Kong Governments have made clear that the arrangements for those who return to Viet Nam should include safeguards that they will be treated properly on return and that their reintegration into Viet Nam society will be carefully monitored.

Article 10

Paragraph 3

45. The Rehabilitation of Offenders Ordinance will be subject to a detailed public review this year, with the aim of extending the range of sentences covered by the Ordinance. The effect of this amendment will be to allow for the rehabilitation of a larger number of ex-offenders.

Article 14

Paragraph 4

46. Magistrates may now refer to a panel, the Young Offenders Assessment Panel, for advice before passing sentence on young offenders. The Panel, comprising representatives from the Social Welfare Department and the Correctional Services Department, considers detailed reports on the offender in question and makes a recommendation on sentencing, having regard to the need to promote the rehabilitation of the offender.

Article 17

47. At the meeting to discuss the United Kingdom's second report on its dependent territories, members of the Human Rights Committee raised a number of supplementary questions concerning the right of privacy. The United Kingdom delegation replied to some of these questions immediately and undertook to answer in writing those for which it did not have sufficient information at the time.

48. The first question, to which only an interim reply was given, concerned data protection: in particular what kind of personal data could be stored in computers and who could hold such information (CCPR/C/SR.857, para. 31).

49. In Hong Kong, while there are no restrictions on the type of personal information which may be stored in computers, there are safeguards covering who should have access to personal information held in government computers. There are several ordinances which restrict the transfer of personal information to other departments or bodies. The Inland Revenue Ordinance, for instance, makes provision in section 4 for official secrecy in the handling of an individual's personal affairs. Where safeguards are not written into law, various levels of access security have been created in departments with large

data bases, in order to control access to personal data stored therein. In the private sector, the implementation of such controls is voluntary. But such controls are in any event consistent with good and efficient data management practice. There have been no complaints of misuse of personal data.

50. The Government is currently studying what kind of data protection legislation would best suit Hong Kong. As an interim measure, Data Protection Principles and Guidelines have been issued by the Government to all users of personal data in both the public and private sectors. The principles draw on the Guidelines produced by OECD and by the Council of Europe. They seek both to promote good data management practice and to increase awareness and observance of internationally accepted principles of data protection. The Guidelines do not have the force of law but it is the Government's policy for departments to adhere to them. The private sector is also encouraged to follow them.

51. The second question (CCPR/C/SR.857, para. 32) concerned the kind of personal data which could be stored in police computers in Hong Kong. Personal particulars and details of previous convictions are stored on the Police Operational Nominal Index Computer System in respect of all persons with criminal convictions. Details of missing or wanted persons, and persons of criminal intelligence interest, are also on record. Some 3,700,000 inquiries are made to the system annually.

52. Under regulation 24 of the Registration of Persons Regulation, cap. 177, the Chief Secretary may disclose a person's registration particulars under such terms and conditions as he may deem fit to impose. Police requests for access to the information may be made under restricted circumstances. For example, the requesting officer must be of or above the rank of Police Superintendent and the request must be in connection with the investigation of a criminal offence or for extradition or deportation proceedings.

53. The third question (CCPR/C/SR.857, para. 33) related to the powers of investigating officers, and the handling of complaints against the police. An interim reply (CCPR/C/SR.857, paras. 35-36) was given by the United Kingdom delegation referring to a mechanism for dealing with complaints of abuse. This is the system of inquiries conducted under the Police "Complaints and Internal Investigations Branch", which is monitored by the Police Complaints Committee. A full explanation of this system was given in the second report, paragraph 18 (CCPR/C/32/Add.14, annex F). In 1988, the Complaints and Internal Investigations Branch received 299 complaints against police officers alleging unwarranted stop and search, arising from identity card checks or checks for other purposes, e.g. possession of offensive weapons. Five of the complaints were substantiated. In four cases where there were complaints of impoliteness, unnecessary use of authority, unnecessary use of authority and rudeness, and an internal complaint of improper procedure, the officers concerned were advised that the complaint against them had been substantiated and cautioned about their behaviour. In the remaining case, where there were complaints of unnecessary use of authority, threat and assault, the complaints of threat and assault were found to be unsubstantiated, but the first complaint was substantiated and the officer involved, an auxiliary police officer, was compulsorily retired under section 9(5) of the Royal Hong Kong Auxiliary Police Force Ordinance.

54. Concern was also expressed at the 1988 session of the Human Rights Committee about the nature of information given to magistrates on the strength of which search warrants might be issued. The Administration has had no complaints that information provided to magistrates before the issue of search warrants is inadequate in any way. The grounds on which any warrant has been issued are open to judicial review in Hong Kong. There have been two recent requests for such review.

55. The first case was a request for review of a search warrant obtained by the Independent Commission Against Corruption (ICAC) over a solicitors' firm. The solicitors claimed privilege for the documents sought by ICAC and also that the warrant was so wide as to be invalid. The case was heard on 31 July 1989 and it was concluded that the warrant was too wide because it did not specify the offence alleged and did not exclude documents which might be privileged. However, it was held that the documents sought by the ICAC were not privileged and that the solicitors should have handed them over when asked. The search warrant was quashed but the solicitors were not awarded costs and the documents were ordered to be made available to the ICAC.

56. The second case was the request for judicial review of a search warrant obtained by the police over another solicitors' firm. It was heard on 30 August 1989. The Attorney General conceded that the warrant had been obtained illegally. The applicant undertook not to commence further proceedings. No declaration was made and neither side was awarded the costs of the application.

Article 19

57. The discussion of this article at the Committee meeting in 1988 touched on the so-called "false news" provision in section 27 of the Public Order Ordinance. A review of this provision was undertaken in Hong Kong in November 1988. The conclusion reached was that, while the original concerns which led to the section being enacted remained valid, it had been misinterpreted as an attempt to restrict the press. In the circumstances, retention of the section would be likely to cause concern to the public out of proportion to the value to the community of keeping the provision. The section was therefore repealed by the Legislative Council in January 1989.

58. Members of the Committee also mentioned Official Secrets legislation, and in particular section 2 of the United Kingdom Acts. As the United Kingdom delegation explained during the meeting, the Official Secrets Acts are laws of the United Kingdom which are applied to Hong Kong and all other dependent territories. The Official Secrets Act 1989, which replaces section 2 of the 1911 Act, received the Royal Assent on 11 May 1989 and is expected to come into force later this year. The provisions of the Act may be extended by Order in Council to any of the Channel Islands, the Isle of Man or any dependent territory. Legislation covering this subject matter will, before 1997, be enacted by the Hong Kong Legislative Council and will replace the United Kingdom legislation as currently applied to Hong Kong.

Article 21

59. The general situation in Hong Kong regarding freedom of assembly and the Public Order Ordinance was described at length at the Human Rights Committee meeting in November 1988 (CCPR/C/SR.857, paras. 60 and 66-67).

60. The recent massive street demonstrations in Hong Kong in support of the democracy movement in China have demonstrated that the Police Force has used the existing legislation intelligently and flexibly to permit major processions to take place without causing undue disruption to the life of the city. As soon as it became apparent that events in China were going to give rise to large-scale sympathetic action in Hong Kong, the police nominated senior officers in the various districts and regions to make contact with persons or organizations likely to be involved in arranging rallies or demonstrations to discuss with them appropriate timings, routes and venues for such events. Through negotiation, suitable routes were found. The police made special traffic arrangements and provided liaison officers to accompany the leaders of the demonstrations to ensure the smooth flow of the processions and make any ad hoc arrangements that were necessary during the course of these events. By this means, demonstrations of an unprecedented scale passed off peaceably and without need for any enforcement action.

61. A specific question was raised at the meeting on the powers of the Commissioner of Police for the control of public meetings (CCPR/C/SR.857, para. 63). A written reply was promised.

62. In explaining how the discretionary powers of the Commissioner of Police have been exercised in the past, it is best first to recapitulate the principal objects of the Public Order Ordinance. The facts which are taken into account by the Commissioner of Police are those necessary to ensure that the Ordinance's objectives are met.

63. The Ordinance recognizes that members of the public have the right to express their views by having meetings and processions on matters of public interest. Meetings of no more than 30 persons in public places, 200 in private premises and processions of no more than 20 persons are not subject to any form of control. However, the Ordinance also recognizes that those who exercise their right to meet or process have an obligation not to interfere with the right of the remainder of the community to enjoy that state of peace, tranquillity and good order which should exist in a democratic society.

64. The ultimate factor that the Commissioner must consider, therefore, in deciding whether to allow a meeting or procession, is whether or not the proposed meeting or procession will interfere with "good order". "Good order" is a fairly wide concept and difficult to define precisely. Nevertheless, it includes:

(a) Participants in a meeting or procession should not by their actions endanger either their own safety or that of other persons in the area;

(b) There should be no congestion or obstruction, either to footpaths (pavements) or to roads;

(c) Any noise generated by the meeting or procession should not amount to a public nuisance;

and two other points which in more recent years have been of little concern, but which cannot be overlooked:

(d) Whether the participants in a meeting or procession are so concerned, so angry or so volatile that there is a danger that emotions will take over so that the participants lose control of themselves and riot; and

(e) Whether the views the participants wish to express are so unpopular that those opposing them may wish to mount a counter-demonstration with the possibility of conflict between the two sides ensuing.

65. In practical terms, cognizance also needs to be taken of such factors as:

(a) The suitability of the venue for a meeting - whether it can safely accommodate the expected number of participants, whether there is adequate access;

(b) The suitability of the proposed route for a procession - whether the road or footpath is wide enough, whether there is much vehicular traffic, whether there are road-works in the area, etc; and

(c) How many other people will be in the area at the time. It is, for example, clearly not desirable for a procession to be proceeding one way if thousands of people exiting from a football match or the race-course will be going the other way at the same time.

66. These are the main factors that the Commissioner will take into account. There are also minor factors, but because circumstances vary so much it is not possible to draw up an exhaustive list.

67. The Commissioner does not have unlimited discretion in deciding whether a public meeting should be disallowed. A public meeting may be disallowed only on the basis of specific provisions of the Ordinance (section 9(3)) and, more importantly, on the ground that the holding of the meeting will prejudice the maintenance of good order. The Commissioner may license a procession only if he is satisfied that it is not likely to prejudice public order or to be used for any unlawful purpose. The corollary, and the actual practice, is that a licence is issued unless the maintenance of public order will be prejudiced.

68. The following figures indicate how infrequently the Commissioner has prohibited a public meeting or refused to license a procession.

	1984	1985	1986	1987	1988
No. of public notified meetings	38	108	82	92	176
Disallowed under section 9	1	2	1	3	3
Public procession licences sought	31	83	169	172	199
Licenses refused	4	1	4	2	5

69. There are as many reasons for disallowing a meeting or refusing a licence. Some examples are:

(a) An application to license a procession in which a film company wished to re-enact a protest march and a riot was refused because of the inadvertent alarm that might have been caused;

(b) A meeting to be held on the pavement of the main street in one of the busiest shopping areas at a peak time was refused because of the congestion that would have resulted; and

(c) A procession by primary school children along the hard shoulder of a motorway was refused on road safety grounds.

There have been no complaints about the disallowance of processions.

70. The general guidelines under which use of amplification equipment, other than hand-held loud hailers, might be banned are:

(a) If the meeting is being held in a public place in close proximity to a residential area at any time; or

(b) If the meeting is being held in a public place in close proximity to office buildings during business hours; or

(c) If the meeting is held in a private place adjacent to or in a residential area, after 11 p.m.; or

(d) If the meeting is being held in a public place that is not a designated place for the holding of public meetings and other members of the public will be using parts of that place for other purposes during the proposed meeting time.

The licensing officer will not apply these guidelines rigidly. His instructions require him to consider all relevant circumstances of place, time and type of meeting before determining limitations and prohibition on the use of amplification equipment.

71. Further information was also requested by the Human Rights Committee on an incident which took place on International Women's Day, 16 March 1988 (CCPR/C/SR.857, para. 64).

72. The view of the Commissioner of Police was that the event in question was not a procession, which is simply an organized movement from one place to another for a common purpose, but a mixture of a public meeting, where views are expressed on a matter of public concern, and an "entertainment" involving singing, dancing and plays or sketches.

73. The Commissioner of Police remains of the view that Statue Square (which is in the central district of Hong Kong) generally, but particularly on a Sunday afternoon, is not a suitable venue for such a "celebration" - there are too many people there using it for other purposes. Victoria Park in Causeway Bay and other areas have been designated as suitable for public meetings, and if the application had been made earlier the Commissioner would have refused the licence and suggested that the celebration be held in a

designated public area. As it was, by the time the organizers' true intentions had been established and this possibility had been broached to the applicant for the licence, she said she had no way of contacting the participants to effect a change of venue.

74. As the plans of the organizers of International Women's Day 1988 had been finalized before the licence they sought had been approved, and as no last-minute contact had been arranged, the police were left with two equally unpalatable choices: either (a) to refuse the licence and then have some thousands of irate would-be participants to deal with, or (b) to allow the celebration to be held despite the unsuitability of the appointed venue for the purpose.

75. In the event, it was decided that (b) was the lesser of two evils. There was no wish to provoke a confrontation and it was felt that, if the admittedly restrictive licence conditions were complied with, it would be possible, with a larger police presence than would normally have been necessary, to prevent any disorder (which in this context included any nuisance or danger to the other persons in Statue Square on that Sunday afternoon).

76. The police intervened only when it became clear to the officers on the ground that there was a danger of the public being inconvenienced to an extent where public order would break down.

Article 22

77. On registration of trade unions, a member of the Human Rights Committee inquired whether any registration applications had been rejected in Hong Kong and, if so, why (CCPR/C/SR.857, para. 62). The answer is that no application for registration of a trade union has been turned down by the Registrar of Trade Unions.

Article 24

78. The Hong Kong Government has recently begun a preliminary study of the draft United Nations convention on the rights of the child as it relates to current legislation in Hong Kong. When this examination is complete, the Hong Kong Government will convey its conclusions and recommendations to the British Government. This preliminary examination should be finished in advance of the adoption of the draft convention by the General Assembly.

Article 25

79. A detailed account of the current state of development towards representative government was given in the second report and supplement and was further discussed in the meeting of the Committee in November 1988. The latest developments are described in the first part of this report.

Article 27

80. The official languages of Hong Kong are English and Chinese. It is laid down in the Official Languages Ordinance that both languages can be used for communication with the Government, and Chinese is in fact widely used by government departments when corresponding with members of the public. Major government reports and publications of public interest are now available in

both languages. In addition, simultaneous interpretation services involving English and Cantonese, a Guangdong dialect spoken by the majority of the local Chinese community, are provided at meetings of the Legislative Council, the municipal councils, district boards and other government boards and committees. With the establishment in October 1988 of the Bilingual Laws Advisory Committee, a statutory committee provided for under the Official Languages Ordinance, a major step has been taken by the Government in the publication of laws in both official languages. The Bilingual Laws Advisory Committee is responsible for advising the Governor in Council on the authenticity of Chinese translations of existing ordinances enacted in English. In addition, future laws will be enacted in both the English and Chinese languages.

81. As far as future human rights protection for ethnic minorities is concerned, the draft Basic Law makes no distinction between ethnic origins in this respect. Ethnic minorities will enjoy the same human rights protection as any other persons in the territory.

Annex

Section XIII of Annex I to the Joint Declaration

The Hong Kong Special Administrative Region Government shall protect the rights and freedoms of inhabitants and other persons in the Hong Kong Special Administrative Region according to law. The Hong King Special Administrative Region Government shall maintain the rights and freedoms as provided for by the laws previously in force in Hong Kong, including freedom of the person, of speech, of the press, of assembly, of association, to form and join trade unions, of correspondence, of travel, of movement, of strike, of demonstration, of choice of occupation, of academic research, of belief, inviolability of the home, the freedom to marry and the right to raise a family freely.

Every person shall have the right to confidential legal advice, access to the courts, representation in the courts by lawyers of his choice, and to obtain judicial remedies. Every person shall have the right to challenge the actions of the executive in the courts.

Religious organizations and believers may maintain their relations with religious organizations and believers elsewhere, and schools, hospitals and welfare institutions run by religious organizations may be continued. The relationship between religious organizations in the Hong Kong Special Administrative Region and those in other parts of the People's Republic of China shall be based on the principles of non-subordination, non-interference and mutual respect.

The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force.

G. MONTSERRAT

1. General

1. Designed on the Westminster model, the Constitution of Montserrat does not permit executive or legislative interference with judicial functions. The three organs of government, the executive, legislative and judiciary, function in harmony and there has never been any attempt to make laws that are arbitrary or to implement them in an arbitrary manner. The judicial independence on which individual liberty rests is enshrined in the Constitution.

2. The need for a bill of rights or for legislation on fundamental rights or anti-discrimination has not been felt. The rule of law prevails and principles of natural justice are observed. Equitable remedies known to English law are available to assist in preventing any miscarriage of justice. Montserrat's institutional framework enables it to conduct its affairs in keeping with the provisions of the International Covenant on Civil and Political Rights. The people of Montserrat remain vigilant in safeguarding their rights and the Government adheres to the provisions of the many international conventions to which it is a party.

2. Information relating to articles in parts I, II and III of the Covenant

3. The following information is supplementary to that provided in the first and second reports of the United Kingdom on Montserrat and given by the United Kingdom delegation at the meetings of the Human Rights Committee which discussed these reports. Articles in relation to which no new legislative or administrative developments have occurred are not included in this report. Inclusion of particular points does not necessarily mean that the United Kingdom considers that they fall within the scope of particular articles of the Covenant.

Article 1

4. Within the framework of the Constitution, people are free to determine their political status and freely pursue their economic, social and cultural development. There are three recognized political parties, and political meetings of these parties are not confined to election time. The Drugs (Prevention of Misuse) Ordinance, although it provides for freezing of assets of an accused, requires that consideration be given to the day-to-day needs of his household.

Article 2

5. In Montserrat the preparation of legislation takes into account international conventions to which the United Kingdom is a party. It is the responsibility of the Attorney General's chambers (where legislation is prepared) to ensure such harmonization. Legislative measures as are necessary to ensure to all individuals the rights recognized in the Covenant will be enacted as the occasion demands. There has been no instance of violation of individual freedom in an arbitrary manner by officials. Adequate judicial remedies are available.

Article 3

6. There is no discrimination between the sexes in terms of civil and political rights. There is no discrimination in terms of education or occupation. Women hold as many responsible positions in and out of government as men. Until August 1987, the Minister of Education was a woman. Three of the six Permanent Secretaries, and one of the two magistrates, are women.

Article 4

7. Emergency powers in Montserrat are vested in the Governor, but there is rarely occasion for the exercise of those powers. The laws which he may make are required to expire at the end of the emergency, except where the Legislature otherwise decides.

Article 5

8. There has been no restriction on the exercise of fundamental human rights.

Article 6

9. Three enactments deal with capital punishment. They are:

(a) The Offences Against the Person Act (chap. 56);

(b) The Genocide Ordinance No. 3 of 1970; and

(c) The Sentence of Death (Expectant Mothers) Act (chap. 73).

10. Under the Offences Against the Person Act a person convicted of murder must be sentenced to death if he is not under 18 years of age.

11. Under the Genocide Ordinance, a person guilty of genocide which results in death is himself punishable with death by hanging. Genocide is given the meaning as in article 11 of the Convention on the Prevention and Punishment of the Crime of Genocide.

12. Under the Sentence of Death (Expectant Mothers) Act, where the offender is found guilty of an offence punishable by death and is pregnant, the sentence passed is one of imprisonment for life.

13. No one has been hanged in Montserrat since 1961. The death penalty has not been imposed since 1960; it remains on the statute books as a deterrent. There is provision in the law for the Crown to extend mercy to any person condemned by the court to suffer death (art. 8, Montserrat Royal Instruction 1959, art. 9, Montserrat Letters Patent 1959).

Article 7

14. A decision to abolish judicial corporal punishment was taken by the Executive Council of Montserrat in July 1989.

15. On 8 December 1988, the United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The ratification was extended to Montserrat.

Article 8

16. There is no compulsory labour. Montserrat's industrial legislation has been amended from time to time with recommendations made by ILO. Restriction is placed on the employment of young persons and children even in family concerns.

Article 9

17. The laws of Montserrat do not permit arbitrary arrest or detention. The rule of law is strictly observed. Section 60 of the Magistrates Code of Procedure Act provides that an accused person shall be entitled to bail if the punishment for the offence with which he is charged does not exceed two years. The prohibition against the grant of bail in cases of treason and murder is subject to the qualification that a judge may, in any case, grant bail. Criminal cases are disposed of without any delay, and it is rare for an accused person to be in a remand prison for a long period even if bail is refused. Persons arrested are required to be taken before a magistrate within 24 hours (sect. 37, chap. 46). They are informed of the charges at the time of arrest.

Article 10

18. Accused persons, whether juveniles or not, are brought to trial without delay. Montserrat has engaged the services of an additional magistrate and there is negligible delay in disposing of criminal cases. In an effort to avoid the imprisonment of young persons, Montserrat hopes to enact a "Community Service Order" ordinance. A bill is now under consideration. When enacted, the magistrate in fit and proper cases would order the performance of community service instead of a prison term.

19. At the request of the British Government, H.M. Chief Inspector of Prisons, Judge Stephen Tumim, carried out an inspection of the prison in Montserrat in March 1989. He recommended that a site for a new prison should be selected without delay, and a new prison built. His report also covered training, management, staffing, physical security, welfare and rehabilitation of prisoners and other matters relevant to the safe custody and proper administration of all prisoners, whether remanded in custody or convicted. The various recommendations, including the building of a new prison, will be implemented as funds become available.

Article 11

20. Imprisonment for mere failure on anyone's part to fulfil a contractual obligation is not permitted.

Article 12

21. The only restriction placed on freedom of movement is the requirement that a person leaving Montserrat should have an exit permit from the Comptroller of Inland Revenue. This is to prevent tax evasion.

Article 13

22. The Immigration and Passport Act provides for "removal orders", but this order may be made only by a magistrate. An alien recently found guilty in Montserrat of possessing narcotic drugs was made to leave the country after sufficient time had been given for this purpose. Recourse to a "removal order" was not made. Provision is made for appeals which have a suspensive effect on "removal orders".

Article 14

23. All are equal before the law. All residents in Montserrat speak the English language. The size of the territory makes it easy for accused persons to obtain legal assistance from the Bar, which remains vigilant in its protection of individual liberty. The crime rate is low and offences committed are not grave in nature.

24. The judicial system provides for appeals to the Eastern Caribbean Court of Appeal and ultimately to the Judicial Committee of the Privy Council.

Article 15

25. Montserrat has never passed any law allowing a person to be held guilty of a crime where the act or omission did not constitute a criminal offence at the time when it was committed.

Article 17

26. The right to privacy is a qualified right under Montserrat law. Where the law permits infringement, e.g. the power to enter and inspect premises, then the exercise of such power is challengeable in the courts. The honour and reputation of individuals are protected by the common law.

27. At the meeting to discuss the United Kingdom's second report on its dependent territories, it was asked what kind of personal data could be stored on computers and who could hold such information (CCPR/C/SR.857, para. 31). Computers are only now being introduced into Montserrat and the need for legislation to protect the security of personal data has not as yet arisen.

Article 18

28. There is freedom of thought, conscience and religion. Although religious instruction is given in schools, parents are allowed to withdraw their children from religious instruction and religious observances and such children will not be under any disadvantage (sect. 27, Education Ordinance, chap. 132). Religious organizations are freely incorporated. there is provision under the Marriage Ordinance for registration of places of public Christian worship (sect. 16, chap. 299). Religious organizations are given exemption from custom duties for the import of goods necessary for their purpose.

Article 19

29. Everyone is entitled to the right to hold opinions without interference. There is freedom of expression. The newspaper of Montserrat has exercised this freedom without any fetter and to the extent that, in recent times, the Chief Justice has had occasion to pass strictures on the newspaper in respect of its articles.

Article 20

30. The provisions in the law of Montserrat (statute and common law) are adequate to deal with anyone who incites to hostility or violence (the Public Order Act 1987 is adequate to deal with such cases).

Article 21

31. At the meeting to discuss the United Kingdom's second report on its dependent territories, a question was asked about the discretionary powers of commissioners of police in the dependent territories in respect of conduct of public meetings (CCPR/C/SR.857, para. 64). The Public Order Act of 1987 provides for appeal to the Governor against refusal of the police to allow public meetings and processions.

Article 22

32. There are trade unions in Montserrat and they are very active. Industrial legislation is frequently amended to give effect to the recommendations of ILO.

Article 23

33. A new Divorce and Matrimonial Causes Ordinance is under consideration by the Bar Association. Provisions adequate to ensure equality of rights are included.

Article 24

34. Minors are protected by law. Births are required to be registered by law, and there is ample provision to ensure that a child does not remain stateless.

Article 25

35. Provision to ensure that there is a general election every five years is found in section 23 (3) of the Constitution and in the Elections Ordinance (chap. 153). Every person over the age of 18 is eligible to vote at an election. Access to public service is on equal terms.

H. PITCAIRN

1. General

1. The sovereignty of the United Kingdom over the Pitcairn Islands was restated and continued by the Pitcairn Order 1970, which made new provisions for its administration. Section 4 provides for the appointment of a Governor with powers and duties conferred on him by the Order or any other law and further as may be assigned to him by Her Majesty from time to time. The Governor has authority by section 5 to make laws "for the peace, order and good government of the Islands". Any such law may be disallowed by Her Majesty acting under section 6 of the Order through a Secretary of State. The Order confers further specific powers on the Governor of appointment of officers, disciplinary powers and the exercise of the prerogative of mercy.

2. The Pitcairn Royal Instructions 1970 are binding directions to the Governor, in particular reserving certain important legislative subjects to the prior approval of a Secretary of State except in case of urgent necessity. The Royal Instructions further provide that any law made by the Governor shall be forthwith sent through a Secretary of State with an explanation of the reasons and occasion for making it for consideration of its disallowance or non-disallowance.

3. The Judicature Ordinance, a law made by the Governor under section 5 of the Pitcairn Order, establishes a Supreme Court of Judicature and a subordinate court for the Islands. Section 14 of the Ordinance applies the rules of equity and statutes of general application in force in England on 1 January 1983 to the Islands so far as local circumstances and the limits of local jurisdiction permit, and subject to any existing or future local ordinances.

4. The local ordinances in force in Pitcairn are collected and published in the Revised Edition of the Laws, 1985. These are freely available at a moderate cost. A local law may be challenged on the grounds that it is ultra vires the lawmaking authority in section 5 of the Pitcairn Order 1970. A statute of the Parliament of the United Kingdom taken to be in force in Pitcairn may be challenged on the ground that it is not so applied by section 14 of the Judicature Ordinance. A challenge to the validity of a Pitcairn law in either of these ways could be raised in the courts of Pitcairn or the High Court of Justice in Britain.

5. The obligations assumed under article 2, paragraph 2, of the Covenant are fulfilled by the application to Pitcairn of the law in force in England other than that provided by local legislation. As in the case of the United Kingdom, the legal rules concerning human rights and freedoms are not embodied in any single constitutional or legal instrument or series of instruments but derive from legislation and the general body of English case law, which affords enforceable legal recognition of laws, instruments and principles as they have been established in England.

6. No steps have been found to be necessary to achieve harmony between the law in force in Pitcairn and the provisions of the Covenant. There has never been - and it is considered that there could never be - any case of conflict between the Covenant and the domestic law of Pitcairn. There are no judicial

decisions in cases where the Covenant has been directly invoked before the courts. Against this background it has not been considered necessary or appropriate to establish any mechanisms to harmonize the Covenant and the domestic law of Pitcairn.

7. Of the four islands in the Pitcairn group, only Pitcairn is inhabited, having a population of some 50 permanent inhabitants. The social structure of the population is akin to that of a single village. The administrative system by which the affairs of the community are regulated is simple by modern standards.

2. Information relating to articles in parts. I, II and III of the Covenant

8. The following information is supplementary to that provided in the first and second reports of the United Kingdom on Pitcairn and given by the United Kingdom delegation at the meetings of the Human Rights Committee which discussed these reports. Articles in relation to which no new legislative or administrative developments have occurred are not included in this report. Inclusion of particular points does not necessarily mean that the United Kingdom considers that they fall within the scope of particular articles of the Covenant.

Article 1

9. No restriction can be or has ever been imposed on the right of the inhabitants of Pitcairn to exercise the choice of self-determination or freely to determine their political status and economic, social and cultural development. On the occasion of various official visits to the Island in recent years, no wish for independent status has been expressed. The option of independence has been specifically discussed on various occasions, when the inhabitants rejected it as impractical and undesirable. By unanimous decision in June 1968, the Island Council declared that it had no wish at that time to change the nature of the relationship between the Government and people of Pitcairn and the Government of the United Kingdom. The Council further declared that independent statehood would be administratively and economically impracticable for Pitcairn. The declaration has not been rescinded nor have either the Island Council or the people of Pitcairn expressed any wish for a change in status. Nothing that was said to the Governor when he visited the Island in September 1985 suggested that they had changed their minds. This confirmed the position found by the Commissioner for Pitcairn when he visited the Islands in June 1983. There has been no interference by the United Kingdom at any time with the right of Pitcairners to make free use for their own ends of their natural wealth and resources. There are no exports of produce or manufactured goods from Pitcairn nor any contribution by Pitcairn to the financial revenue of the United Kingdom.

10. It has not been necessary in Pitcairn to take any measure to prevent public and private support for apartheid. No faintest suggestion of support for the apartheid régime of South Africa having ever been evinced in Pitcairn, it has not been necessary for the administration to take any preventive measures. By its very origins, the tiny population of Pitcairn recognizes the admixture of peoples of differing ethnic origins. In a formal measure requested by the Government of the United Kingdom, the administration has prohibited the importation of Krugerrand coins to demonstrate its overt opposition to the apartheid régime of South Africa.

Articles 2 and 3

11. The measures which give effect to the rights recognized in the Covenant are described in this and previous reports in relation to each article. They do not discriminate between individuals on any of the bases referred to in article 2 other than to the extent referred to in this and previous reports. The several statutes of the Parliament of the United Kingdom which prohibit discrimination are taken to be statutes of general application in force in Pitcairn. The rights of persons under such statutes would be enforceable in the courts of Pitcairn. There are no legislative or administrative disadvantages cast upon either sex in Pitcairn in the fields of education, occupation, public life or otherwise, nor does actual discrimination or prejudice exist. The position of Island Secretary, the third highest post on the Island, is currently held by a woman who has served in the post for the last three years. At least two women have served on the Island Council in each of the last 16 years.

Article 4

12. No necessity has arisen to invoke the right of derogation under this article. No law in the nature of an emergency regulation ordinance is in force in Pitcairn. The present state of the law in Pitcairn is that the Governor has no statutory power to proclaim a state of emergency. If such an emergency arose, the powers of the Governor would be exercised in accordance with the law and consistently with the provisions of the Covenant.

Article 6

13. The law of the United Kingdom, which fully recognizes the sanctity of the right to life, applies equally to Pitcairn by reason of the application of English law pursuant to section 14 of the Judicature Ordinance. The legal provisions applied to genocide are those in force in the United Kingdom. The offences punishable by capital punishment are treason, piracy and murder. The death penalty has not been imposed in respect of any offence committed on Pitcairn since 1897.

Article 7

14. On 8 December 1988, the United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The ratification was extended to Pitcairn.

Article 9

15. The rights of personal liberty provided by the article are enshrined by law in Pitcairn as they are in the United Kingdom. There is no power of imprisonment without trial as such, although a person may be held in custody for strictly limited periods pending trial or sentence subject to the supervision of the courts. Detailed provision is made in parts IV and VII of the Justice Ordinance (cap. 3) for the implementation of this article. Application as of right for release on bail is available to all persons except those charged with murder or treason; the Supreme Court may however in its discretion grant bail in any case to a person accused of murder or treason (sect. 22 of the Justice Ordinance). Subsection (2) strictly requires that bail shall be fixed with regard to the circumstances or every case. The

Justice Ordinance does not itself make specific provision for the payment of compensation in the case of unlawful arrest or detention, but the rights of persons so wrongfully detained are freely available in the civil jurisdiction of the courts. The Crown or an agent of the Crown would normally be civilly liable in damages for the wrongful loss of liberty of any person. In certain circumstances, exemplary as well as purely compensatory damages may be awarded. The deprivation of the liberty of any subject, even for a short time, without lawful authority or by means of lawful authority wrongfully obtained, for example by deception of the warrant-issuing authority, is an actionable wrong punishable in damages without proof of actual material loss.

16. Under the law of Pitcairn, every person arrested by reason of the alleged commission of a criminal offence must be informed at the time of arrest or immediately thereafter of the nature of the charge or charges against him. He is entitled to make effective contact with his family or an adviser without delay, i.e. as soon as such contact can be arranged.

Article 11

17. Imprisonment for debt (inability to fulfil a contractual obligation) has long been limited in Pitcairn as it is in the United Kingdom. The enforcement of a judgement of the court for the payment of a sum of money is directed in the first place to execution upon the real and personal property of the judgement debtor. Alternative enforcement is then by payment by instalments. In the case of wilful default where the court is satisfied that he or she is able to pay the sum due, the judgement debtor may be sentenced to a term of imprisonment not exceeding 42 days, the sanction of imprisonment exists as punishment for defiance or contempt of the order of the court rather than for failure to pay the sum due; in any case where the court is not satisfied that the debtor has the means to pay, imprisonment will not be ordered.

Article 12

18. No restrictions are placed on the right of persons lawfully within Pitcairn to liberty of movement and freedom to choose a place of residence. The right to enter Pitcairn lawfully is regulated by the provisions of the Landing and Residence Ordinance (cap. 5). Any person may enter and reside upon the grant of a licence by the Governor under section 4. A permit to land as a visitor may be issued to any person by the Island Magistrate under section 5 of the Ordinance. The necessity to obtain a licence or permit does not apply to public officers and other persons defined in section 8 of the Ordinance as having the status of a British dependent under the British Natinality Act 1981 and enjoying an appropriate connection with the Island. No legal restrictions whatever are placed on any person wishing to leave the Islands.

Article 13

19. The Landing and Residence Ordinance does not make separate provision for aliens as distinct from persons having British dependent status under the British Nationality Act. There is provision in section 6 of the Ordinance for the expulsion of any person who is unlawfully in the Islands either by reason of having landed in contravention of the provisions of the Ordinance or having failed to comply with any condition of the licence or permit by which entry

was obtained. While there is no prescribed appeal procedure under the Landing and Residence Ordinance, the validity of an order of the Governor under section 6 could be challenged in court proceedings. No such order may be made against the classes of exempted persons listed in section 8.

20. Deportation applies only to persons who are unlawfully in the Islands. While no specific appeal or review procedures are provided, no restrictions have been imposed upon the general right of recourse to the courts to contest the legality or validity of any such decision.

21. There is no right of appeal as such against an order of the Governor under section 6 of the Landing and Residence Ordinance requiring a person to depart from and remain out of the Islands. Any civil proceeding to question the validity of such an order would not of itself operate as a stay of execution. However, in view of the absence of any transport service by air and the great infrequency of passenger transport by sea, the problem does not in fact arise as a practical issue. If it were necessary to obtain a stay of execution pending the determination by a superior court of the validity of the Governor's order, the court would have jurisdiction to grant an injunction preventing the removal of the alien concerned from the Islands pending the final determination of the proceedings before the court.

Article 14

22. It was explained in the United Kingdom's first report on its dependent territories that it is not normally possible to assign professional legal aid to an accused person as there are no practising lawyers in the Islands or within a reasonable distance. In the event of a criminal trial of any serious consequence, the appearance of competent qualified counsel to conduct both the prosecution and the defence would be secured by the administration by arrangement with the Government of the United Kingdom.

Article 17

23. At the meeting to discuss the United Kingdom's second report on its dependent territories, it was asked what kind of personal data could be stored in computers and who could hold such information (CCPR/C/SR.857, para. 31). The existing legal system does not permit the intrusion of the State or any third party upon the privacy of any individual. There are no legislative provisions for the gathering and retention of personal information and data respecting the inhabitants of Pitcairn. Such personal information as may be held by any office or department of the administration is by the rules of the Civil Service regarded as strictly inviolate and never to be released to any other person or organ of government. The only computer on the Island was donated to the school recently, but it is not in working order and in any event incapable of recording personal data. It is stated to be functional for the purpose of prepared programmes and entertainment uses only.

Article 20

24. The provisions of the law which apply the prohibitions prescribed in this article in England as in force on 1 January 1983, including statutes specifically forbidding the practice of racial and other discrimination, are in force as laws of general application of Pitcairn. There has been no necessity to enact local legislation for the prohibition of racial and religious hatred in Pitcairn.

25. The news media cannot be used as an organ of propaganda in Pitcairn because the Island has in fact no radio, television, or, in the accepted sense, newspapers. A cyclostyled news sheet produced locally on a regular basis is concerned only with parochial trivia and does not publish information in the nature of official or political comment. Moreover, the editorial policy of the news sheet is not in any way controlled by the local government or the administering Power. It is concerned with social information at a personal level and is incapable of use as an organ of propaganda.

Article 21

26. A question was asked during examination of the United Kingdom's second report on its dependent territories about the discretionary powers of commissioners of police in the dependent territories in respect of conduct of public meetings (CCPR/C/SR.857, para. 64). There is no commissioner of police in Pitcairn. In practice, the function the police is minimal. The sole Island police officer persistently reports on a periodic basis that there are no complaints pending. His practical duties are confined to ensuring security of official premises at night-time.

Article 22

27. There is no law in force in Pitcairn which restricts the right of freedom of association. The Trade Unions and Trade Disputes Ordinance (cap. 14) provides for the formation and registration of trade unions without restriction. Part II of the Ordinance provides for the registration of trade unions, and part III is concerned with determination of trade disputes. The Ordinance does not confer power on the Governor or the Administration to control the actions of any trade union or its members with respect to the freedom of assembly of persons.

Article 23

28. The law in force on Pitcairn does not permit or recognize inequality between married persons in any respect during marriage or upon the dissolution of such marriage, including the division of matrimonial property. No legal differences in the rights of legitimate or illegitimate children exist under the laws of Pitcairn. It is not possible to provide information regarding family planning as an official programme on Pitcairn, although advice at a personal level is always available from the officer in charge of nursing services on the Island, and contraceptives are provided free of charge.

Article 24

29. There has been no necessity to enact local legislation in Pitcairn specifically for the protection of children, so that the statutes of the Parliament of the United Kingdom for the protection of children and young persons apply in Pitcairn. The law in force as at 1 January 1983 extends to the Islands so far as local circumstances and the limits of local jurisdiction permit.

30. The right of every child born in the Islands to acquire the status of a British Dependent Territories Citizen is governed by the British Nationality Act 1981.

Article 25

31. The rights and freedoms prescribed by the article are of conspicuous importance in the somewhat elementary system of administration of Pitcairn. This remains unchanged since it was described in the United Kingdom's first report on its dependent territories. The people of Pitcairn have given no indication that they find the manner of electing the Island Council too complex or inappropriate in any way. The subject was not mentioned by any person when the Governor visited the territory in 1985. There is now no discrimination between males and females for eligibility for election to the office of Island magistrate or chairman of the Internal Committee.

I. ST. HELENA

1. General

1. There are 12 elected members of the Legislative Council, who, with the Chief Secretary, Financial Secretary and the Attorney-General as ex officio members, are under the presidency of an elected Speaker. These changes, as can be seen when comparing with the initial report, came about as a result of the coming into force of St. Helena's new Constitution Order on 1 January 1989. Five of the elected members are nominated by the Legislative Council and appointed by the Governor as chairmen of the five Council Committees - Agricultural and Natural Resources, Education, Public Health, Public Works and Services and Social Services. The chairmen are also members of the Executive Council.

2. St. Helena has a considerable body of local law to deal with local conditions. The St. Helena legislation is supplemented by basic English law which, as it stood on 1 January 1987, is in force in St. Helena "subject to, and save in so far as it is not inconsistent with any specific law" of St. Helena.

3. Criminal law is administered by benches of magistrates selected on rota from a panel. The present panel comprises 18 magistrates of whom two are not island-born St. Helenians. The chairman of the magistrates is elected at the annual justices meeting, the present chairman being an Islander by virtue of his being resident on the Island for a period exceeding seven years. Sentences of imprisonment of over six months have to be confirmed by the Supreme Court.

4. Non-contentious matters in the Supreme Court are dealt with by the Governor or an acting judge under the powers vested in them by section 46 of the St. Helena Constitution Order, 1988.

2. Information relating to articles in parts I, II and III of the Covenant

5. The following information is supplementary to that provided in the United Kingdom's first and second report on St. Helena and given by the United Kingdom delegation at the meetings of the Human Rights Committee which discussed these reports. Articles in relation to which no new legislative or administrative develoments have occurred are not included in this report. Inclusion of particular points does not necessarily mean that the United Kingdom considers that they fall within the scope of particular articles of the Covenant.

Article 1

6. Mr. Walter Wallace, Special Adviser to the United Kingdom on Dependent Territories, visited St. Helena in October 1987 to conduct a review of the Constitution. After wide consultation which included both oral and written representations, Mr. Wallace was able to come to the conclusion that a constitutional change was needed. In the light of that outcome, a new Constitution was drafted, and after further deliberations was brought into force on 1 January 1989. The new Constitution gives legislative councillors wider powers in determining the affairs of the Island, and also gives civil

servants, with the concurrence of the Governor, the right to stand for election. The voting age has been lowered to 18 and the Attorney-General has been given exclusive control over all prosecutions before the courts.

7. As a result of one of Mr. Wallace's recommendations, a Commission of Inquiry was set up in April 1988 to review the present division of St. Helena into electoral areas. The report of the Commission was accepted by the Governor and the Island has now been subdivided into 10 electoral areas instead of the previous 12.

Articles 2 and 3

8. Other than as stated in the first report, there are no distinctions such as those stated in these articles of the Covenant. The right to vote in Legislative Council elections is given to all British subjects over the age of 18 years subject to:

(a) In the case of "Islanders", 12 months' residence;

(b) In the case of "non-islanders", two years' residence.

9. The law provides civil remedies or criminal sanctions in respect of the violation of individual rights. There are no restrictions on a person's right of recourse to the courts, but the community is so small that there are no qualified lawyers in private practice. Since the first report, a Lay Advocates and Legal Assistance Scheme has been established to enable unqualified laymen to represent and advise, free of charge, members of the community. The code of conduct of such lay advocates is regulated by the Law Advocates and Legal Assistance Ordinance, 1986. Finances are provided under a Trust Fund established by the St. Helena Government.

Article 4

10. There has been no occasion for any derogation under this article to be made in respect of St. Helena.

Article 7

11. The situation in St. Helena is exactly as it is in the United Kingdom. There are neither the facilities nor the intention to carry out medical or scientific experimentation in St. Helena.

12. On 8 December 1988, the United Kingdom ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The ratification was extended to St. Helena.

Article 8

13. There is no slavery or servitude, nor any forced or compulsory labour as described in the article on St. Helena. With regard to the first report, community service orders are now possible in St. Helena. However, they are in accordance with paragraph 3 (c) of the article.

Article 9

14. Rights in St. Helena are in accordance with this article. The Criminal Procedure Ordinance, 1975, deals with the legal requirements in respect of arrest and detention.

Article 10

15. The provisions of this article are observed. In practice, there are seldom more than four prisoners in the prison. In the year 1987/88, the maximum prison population on any one day was six.

Article 12

16. So far as Islanders of St. Helena are concerned, the terms of the article are fully observed; as they are for non-islanders, except in so far as for them there are restrictions under the Immigrants Landholding (Restriction) Ordinance, 1987, which requires such persons to obtain a licence from the Governor in Council to hold an interest in land in the Island.

Article 14

17. Persons on St. Helena now have the option of defending themselves or seeking legal assistance from two lay advocates. By established practice, persons are informed of their right to have legal representation. Legal assistance and advocacy is provided free of charge as a result of a Trust Fund established by the St. Helena Government. The article is observed, partly under applicable English law, and partly under the St. Helena Criminal Procedure Ordinance 1975.

Article 17

18. At the meeting to discuss the United Kingdom's second report on its dependent territories, it was asked what kind of personal data could be stored in computers and who could hold such information (CCPR/C/SR.857, para. 31). Computers are relatively new to the Island of St. Helena and are at present used only for word processing, accounting and statistical purposes. In the event that computers were in the future used for the storage of personal data, the St. Helena Government would then consider applying the United Kingdom Data Protection Act.

Article 21

19. At the same meeting, a question was asked about the discretionary powers of commissioners of police in the dependent territories in respect of the conduct of public meetings (CCPR/C/SR.857, para. 64). Discretionary powers are available to the Chief of Police in St. Helena under section 33 of the Police Force Ordinance 1975. However, there has been no necessity for the present Chief of Police to invoke the powers available under this section.

20. On 30 November 1988, a Commission of Inquiry was set up by the Governor for the purpose of "inquiring into the provisions of the Police Force Ordinance 1975, and to make recommendations as to what (if any) changes should be made therein". The Commission comprised a lay advocate and the Deputy Chief of Police under the chairmanship of the Sheriff. The Commission called

for both oral and written representations. Oral representations were heard at public meetings. The Commission submitted its recommendations in the form of a new draft police force ordinance to the Chief Secretary on 10 April 1989. One of the recommendations of the Commission included a provision for the setting up of a police authority for the purpose of supervising the operations and running of the St. Helena Police Force. The draft ordinance is now with the Attorney-General for consideration.

Article 23

21. St. Helena law conforms to the provision of this article, and is substantially the same as English law save that for the marriage of a person below the age of 21 years parental consent is required. The English Domestic Proceedings and Magistrates Courts Act applies in St. Helena. It is common practice in St. Helena that, at the dissolution of a marriage, provisions for the necessary protection of any children are given priority.

Article 25

22. All citizens who are British subjects of the age of 18 years have the right and opportunity to vote, subject to residential qualification, as follows:

(a) In the case of an Islander, 12 months' ordinary residence immediately preceding application for registration as a voter;

(b) In the case of a non-islander, two years' ordinary residence immediately preceding application for registration, during which two years he must have been physically present in St. Helena for an aggregate period of at least 18 months.

23. No person shall be entitled to be registered as an elector, or to vote, if:

(a) He is, by virtue of his own act, under any acknowledgement of allegiance, etc., to a foreign Power;

(b) He is certified to be insane or otherwise adjudged to be of unsound mind;

(c) He is under sentence of death imposed on him by any court in any part of the Commonwealth, or is under a sentence of imprisonment for a term of or exceeding 12 months;

(d) He is disqualified from registration due to an election offence.

24. Any registered voter may stand for election to the Legislative Council but is not qualified to be elected if:

(a) He holds or is acting in any public office; however, the 1988 Constitution Order enables public officers to stand for election in accordance with arrangements approved by the Governor;

(b) He is an undischarged bankrupt;

(c) He holds or is acting in any office the functions of which involve any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register, or if he has any of the disqualifications from being registered as a voter.

25. The Legislative Council elections are the only ones held in St. Helena, as there are no local authorities, and (apart from ex officio members) the members of the Executive Council are nominated from the elected members of the Legislative Council by the said Council and appointed by the Governor.

Article 26

26. All persons are equal before the law. There is no form of visible discrimination on St. Helena

J. TURKS AND CAICOS ISLANDS

1. General

1. The general election of 3 March 1988 resulted in a clear victory for the People's Democratic Movement Party, which gained 11 out of 13 elected seats in the Legislative Council. There were no challenges to the ballot and the turnout of voters was on average in excess of 75 per cent of the electorate. The election was therefore considered to be a success for the democratic process.

2. The Chief Minister and the other Ministers held discussions with the United Kingdom Government in the months following the election. Financial measures were agreed to allow for an increased area of discretion on the part of the local government in the use of aid funds. The elected government declared an objective of financial independence within four years and political independence not less than 10 years from that time, i.e. 1998. Thus, with regard to the exercise of the right of self-determination, the policy of the Turks and Caicos Islands Government in that political independence shall be based upon a sound economy, prosperity and a clear decision by the people of the Turks and Caicos Islands in favour of such a step.

3. As stated in previous comments to the Committee, the rights contained in the Covenant are reflected in the country's Constitution. The contents of that law have been widely debated in meetings of the local branch of the Commonwealth Parliamentary Association (CPA). On 28 and 29 March 1988, a symposium was held in the Islands by the CPA which was attended by several experienced parliamentarians from various Commonwealth countries. It was regarded by participants as successful in its aim of increasing awareness of parliamentary procedures and customs and basic constitutional issues. The proceedings of the symposium were broadcast on local radio and in the local newspaper.

4. In pursuance of the long-term objectives of self-determination, emphasis has been placed on the need to secure employment and training for Turks and Caicos Islanders. In particular, negotiations with developers and investors include provision for restricting expatriate employment and for the training of Islanders for worthwhile positions which enhance individual self-respect. Furthermore, in the disposal of "Crown land", i.e. land owned by the Government, preference is given to Islanders for residential and commercial developments by discounted lease rentals and purchase payments, and the right to acquire "freehold title", i.e. ownership in perpetuity, is limited to Islanders. For similar reasons, the licensing of businesses under the Business Licensing Ordinance 1983 favours Islanders, so that business opportunities are kept open for them by refusal of licences to expatriates for businesses which are or could be carried on by Islanders.

5. Financial stability has already been achieved to the extent that local revenue covers local expenditure of a recurrent nature. For the financial year 1989/90, the United Kingdom Government will provide capital development aid to the estimated extent of £3,600,000 to be spent on projects put forward by the locally elected government.

2. Information relating to articles in parts I, II and III of the Covenant

6. The following information is supplementary to that provided in the first and second reports of the United Kingdom on the Turks and Caicos Islands and given by the United Kingdom delegation at the meetings of the Human Rights Committee which discussed these reports. Articles in relation to which no new legislative or administrative developments have occurred are not included in this report. Inclusion of particular points does not necessarily mean that the United Kingdom considers that they fall within the scope of particular articles of the Covenant.

Article 1

7. Information hereunder is provided in the general introduction to this report.

Article 2

8. Since the introduction of the Constitution on 4 March 1988, there have been no legal proceedings or challenges alleging any form of discrimination on the part of the Government. From this it is inferred that the rights enshrined in the Covenant and reiterated in the Constitution are being respected by governmental officials.

Article 3

9. Reference is made to the previous report and relevant supplementary information provided. Since that information was provided, the Employment Bill has become law and is in operation. The rights conferred by it apply equally to men and women. In addition, it confers rights of maternity leave in respect of up to four confinements.

Article 4

10. To date, there have been no proclamations of emergencies and the Emergency Powers Ordinance has not been invoked.

Article 6

11. It is now reported that, on 27 April 1988, a man named Perez was sentenced to death for murder, having been convicted by a jury of that offence. On 20 February 1989, the Court of Appeal quashed the conviction and substituted a conviction for manslaughter, and a sentence of seven years' imprisonment. In passing judgement, the Court of Appeal decided that, if the murder conviction had been upheld, it would also have ruled that the death sentence for murder was mandatory, not discretionary, following the decision of the Court of Appeal of the Bahamas in a similar case decided upon a similarly worded statutory provision.

12. The right to apply for a pardon or commutation of sentence is contained in the Constitution.

Article 7

13. In 1988, the United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The ratification was extended to the Turks and Caicos Islands.

Article 8

14. Further to the information previously provided, it is now reported that:

(a) The Courts continue to have the power, and to use it, to pass sentences of imprisonment with hard labour. In practice, this involves tasks such as cutting back scrub (bushes) on government land, clearing up public areas by picking up rubbish, and similar cleaning work. Prisoners are not given tasks which would benefit private individuals or which would or might be injurious to their health. The prisoners regard such opportunities to be out of the prison as welcome privileges;

(b) The Employment Ordinance 1988 creates a legally enforceable remedy for a person unfairly dismissed to be reinstated in his or her employment. This is an option available to an employee and does not derogate from the position previously stated, that specific performance of a labour contract will not be ordered.

Article 9

15. Local laws and the Constitution continue to safeguard the rights contained in the Covenant and they are enforced by the Attorney-General of the territory and by the Resident Magistrate and the Chief Justice. There have been cases, believed (in the absence of reliable statistics) to be no more than about eight, during the period March 1988 to August 1989, in which the court has rejected evidence of alleged confessions on the grounds that they were made involuntarily, including failure to advise an accused person of his rights to an adequate extent.

16. There have been no successful actions for damages for wrongful detention.

17. There has been one isolated case of a police officer who struck a person in custody. The injury was minor and it is anticipated that compensation will be paid. The police officer was prosecuted, pleaded guilty and was fined $US 500. He was dismissed from the force.

Article 10

18. Her Majesty's Chief Inspector of Prisons in England and Wales, His Honour Judge Tumin, carried out an inspection of the territory's prison and penal system between 28 February and 3 March 1989. He subsequently made a written report containing recommendations which it is anticipated will be implemented, subject to availability of funds.

19. Since that visit, the Chief Secretary, in his capacity as governor of the prison, goes to the prison each week and receives comments and complaints from prisoners and staff. There are also regular visits by a medical officer.

20. The territory has no psychiatric institution of its own. A consultant psychiatrist based in Nassau, Bahamas, at the Sandilands Institute, visits the country periodically and provides specialist advice and assistance. Suitable cases are referred to the Institute for residential treatment, either by consent of the Institute or an order of the court. A man who has been treated in England at a secure psychiatric unit since 1981 is soon to be returned to the region, to be treated at the Sandilands Institute as a resident patient, in the hope that he will benefit from a return to a familiar environment and possibility of family contacts. He had been sentenced to imprisonment for manslaughter in 1979.

Article 13

21. By way of correction of what was stated in the second report (CCPR/C/32/Add.14, annex J, para. 23), an appeal against a deportation order is not to "the Governor in Council", i.e. the Governor seeking and accepting the advice of the Executive Counil; it is to the Governor acting in the exercise of his discretionary powers, i.e. without consulting the Executive Council. Such an appeal does have a suspensive effect.

Article 16

22. The Constitution safeguards the rights of all persons to whom the territory's laws might be applied.

Article 17

23. The requirements of this provision are met by the safeguards of the Constitution and by the locally enforceable law relating to defamation of character, which in general is the same as English law.

24. At the meeting to discuss the United Kingdom's second report on its dependent territories, it was asked what kind of personal data could be stored in computers and who could hold such information (CCPR/C/SR.857, para. 31). The only permanent data bank kept by the Government of the Turks and Caicos Islands is that relating to expenditure and revenue. Therefore the only personal records involved are those relating to salaries and deductions which are authorized by civil servants. Information on individuals, such as personnel files on civil servants, are kept in a documentary form. There is a rule that individuals should be informed of any adverse comment recorded against them. Records kept by private sector institutions such as banks are left to the discretion of such bodies. They are subject to confidentiality laws which limit disclosure to third parties.

25. The process of compiling permanent data banks of computerized information is only beginning to get under way in the Turks and Caicos Islands. At the same time, concern has been expressed in the private sector that existing laws may be inadequate to cover the release of confidential information by a process as simple as transmission by telephone from a computer in the Islands to a computer overseas. It is therefore likely that plans will have to be made to introduce local legislation of a nature similar to the Data Protection Act of the United Kingdom.

Article 18

26. There is nothing to add to what has previously been stated, save that the Education Ordinance 1989 expressly refers to freedom from discrimination on the grounds of religious persuasion in respect of entry into the public school system.

Article 19

27. There is nothing to add to what has been previously stated. Since the present Constitution was introduced in March 1988, there have been no claims presented to the Supreme Court citing any breach of the fundamental rights concerned.

Article 20

28. In addition to what has been said previously, it should be noted that facts giving rise to a breach of this article would probably give rise to a criminal offence of a broader nature, viz. using violent or abusive language tending to a breach of the peace (Summary Offences Ordinance, cap. 25, sect. 14 (b)), punishable by up to three months' imprisonment.

Article 21

29. A question was asked during examination of the United Kingdom's second report on its dependent territories about the discretionary powers of commissioners of police in the dependent territories in respect of conduct of public meetings (CCPR/C/SR.857, para. 64). In the Turks and Caicos Islands, the Commissioner of Police has no express statutory powers. He can act against an assembly of persons only where there is likely to be a breach of the criminal law such as violence, criminal damage or interference with the proceedings of the court. Freedom of assembly and association is guaranteed by section 76 of the Constitution, but it is subject to exceptions in the interests of defence, public safety, public order, public morality, public health, protection of the rights and freedoms of others and legal restrictions on public officers. The Commissioner of Police is subject to the general directions of the Governor and to legal advice from the Attorney-General.

Article 22

30. The Employment Ordinance 1988 grants legal protection to those seeking to set up trade-union organizations. To date, there are no known moves to do so. The Ordinance promotes the creation of unions by rendering a dismissal for trade-union activity to be automatically unfair. Substantial local employers, such as Barclays Bank PLC and Cable and Wireless Ltd., have staff associations which are equivalent to trade unions.

Article 24

31. Further to the second report on the Turks and Caicos Islands, the Education Ordinance 1989 specifically makes it unlawful to employ a child of compulsory school age (between 4 and 16 years) between 8 a.m. and 3.30 p.m. on a day on which attendance at school is required by law.

Article 25

32. The position continues to be as set out in the Constitution and in previous statements. The restrictions and disqualifications imposed by section 25 of the Constitution are considered to be reasonable and in the public interest and are generally accepted as such.

Article 26

33. There is nothing to add to what has been stated previously save that, and to the extent that, persons who belong to the Islands are accorded preferential treatment in respect of employment and allocation of government land, as stated in the general comments under part I of this report. These actions are considered to be justified by article 1 of the Covenant.

APPENDIX

List of documents or of extracts from documents submitted to the Centre for Human Rights with the third periodic report */

BERMUDA

Bermuda Constitution Order 1968
Human Rights Act 1981
Human Rights Amendment Act 1988
Public Order Act 1963
Summary Offences Act 1926
Police Act 1974
Bermuda Digest of Statistics 1988

BRITISH VIRGIN ISLANDS

Virgin Islands (Constitution) Order 1976
Matrimonial Causes (Amendment) Act 1986

CAYMAN ISLANDS

Cayman Islands (Constitution) Order 1972 and amendments
(S.I. 1984 No. 126 and S.I. 1987 No. 2199)
Grand Court Law 1975 and Grant Court (Amendment) Law 1987
Cayman Islands Royal Instructions 1972
"The Courts of the Cayman Islands" by Elizabeth W. Davies
Population and Vital Statistics of the Cayman Islands 1988
Labour Law 1987
Caymanian Protection Law 1984
Emergency Powers Law (Revised) 1978
Emergency (Public Security) Law (Revised) 1978
Penal Code 1975
Prison Rules 1981
Juveniles Law 1975
Criminal Procedure Code 1975 with amendments
Public Order Law 1973

FALKLAND ISLANDS

Falkland Islands Constitution Order 1988
Crimes Ordinance 1989
Criminal Justice Ordinance 1989
Immigration Ordinance 1987

GIBRALTAR

Gibraltar Constitution Order 1969
Employment (Amendment) Ordinance 1989 and Employment Ordinance 1984
Criminal Offences Ordinance
Traffic Ordinance

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*/ These documents are available for consultation by members of the Committee in the files of the Secretariat.

HONG KONG

Hong Kong Letters Patent
Hong Kong Royal Instructions
Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong
Inland Revenue (Amendment) (No. 3) Ordinance 1989
Emergency Regulations Ordinance
Emergency (Deportation and Detention) Regulations
Emergency (Deportation and Detention) (Advisory Tribunal) Rules
Emergency (Deportation and Detention) (Forms) Order
Emergency (Principal Regulations)
Emergency (Requisition) Regulations
Appointment of Places of Detention (Consolidation) Notice
Education Regulation 92
Immigration Ordinance
Customs and Excise Service Immigration Ordinance 1987
Rehabilitation of Offenders Ordinance 1986
Inland Revenue Ordinance 1986
Data Protection Principles and Guidelines
Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data
Registration of Persons Regulations Ordinance 1987
Royal Hong Kong Auxiliary Police Force Ordinance 1980
Public Order Ordinance 1987
Official Languages Ordinance 1980

MONTSERRAT

Constitution and Elections Ordinance
Offences Against the Persons Act
Genocide Ordinance No. 3 of 1970
Sentence of Death (Expectant Mothers) Act
Montserrat Royal Instructions 1959
Montserrat Letters Patent 1959
Magistrate's Code of Procedure Act
Immigration and Passport Act
Education Ordinance
Marriage Ordinance
Public Order Act 1987

PITCAIRN

Pitcairn Order 1970
Pitcairn Royal Instructions 1970
Judicature Ordinance
Justice Ordinance
Landing and Residence Ordinance
Trade Unions and Trade Disputes Ordinance

ST. HELENA

St. Helena Constitution Order 1988
Lay Advocates and Legal Assistance Ordinance 1986
Criminal Procedure Ordinance 1975
Immigrants Land Holding (Restriction) Ordinance 1987

TURKS AND CAICOS ISLANDS

Turks and Caicos Islands Constitution Order 1988
Business Licensing Ordinance 1983
Employment Ordinance 1988
Emergency Powers Ordinance 1962
Education Ordinance 1989
Summary Offences Ordinance